16B C.J.S. Constitutional Law VI XV Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Fourteenth Amendment
A.L.R. Index, Privileges and Immunities
West's A.L.R. Digest, Constitutional Law 2860, 2861, 2867, 2910 to 2916, 2920, 2922 to 2926, 2929, 2930, 2931, 2935 to 2945, 2950, 2951, 2953, 2959

End of Document

16B C.J.S. Constitutional Law VI XV A Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

A. Constitutional Provisions

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Fourteenth Amendment
A.L.R. Index, Privileges and Immunities
West's A.L.R. Digest, Constitutional Law 2860, 2861, 2867, 2910 to 2916, 2920, 2922 to 2926, 2929, 2930, 2931, 2935 to 2945, 2950, 2951, 2953, 2959

End of Document

16B C.J.S. Constitutional Law § 1204

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

A. Constitutional Provisions

§ 1204. Generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2860, 2861, 2867, 2910 to 2916, 2920, 2922 to 2926, 2929, 2930, 2931, 2935 to 2945, 2950, 2951, 2953, 2959

Natural persons, and they alone, are entitled to privileges and immunities under the Federal Constitution, and a corporation is not a citizen within the meaning of these provisions.

The Constitution of the United States provides that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"[1] and that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."[2] The original Article IV provision has been distinguished from the national Privileges and Immunities Clause of the Fourteenth Amendment.[3]

Natural persons, and they alone, are entitled to privileges and immunities under these provisions.[4] A corporation is not a "citizen" within the protection of either one of these two clauses,[5] and this rule also applies to municipal corporations.[6]

A subdivision of the state does not enjoy privileges and immunities.[7]

CUMULATIVE SUPPLEMENT

Cases:

Privileges and Immunities Clause of the United States Constitution, which provides that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states, has been interpreted not to protect corporations. U.S. Const. art. 4, § 2, cl. 1. Tennessee Wine and Spirits Retailers Association v. Thomas, 139 S. Ct. 2449 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Art. IV, § 2, cl. 1.

2 U.S. Const. Amend. XIV, § 1.

3 N.Y.—Salla v. Monroe County, 48 N.Y.2d 514, 423 N.Y.S.2d 878, 399 N.E.2d 909 (1979).
Privileges and immunities under:
Original provision, see § 1205.
Fourteenth Amendment, see § 1207.

4 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
Mich.—Kuhn v. Department of Treasury, 15 Mich. App. 364, 166 N.W.2d 697 (1968), judgment modified on other grounds, 384 Mich. 378, 183 N.W.2d 796 (1971).

5 U.S.—Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981); Lone Star Sec. & Video, Inc. v. City of Los Angeles, 989 F. Supp. 2d 981 (C.D. Cal. 2013); Coleman & Williams, Ltd. v. Wisconsin Dept. of Workforce Development, 401 F. Supp. 2d 938 (E.D. Wis. 2005).
Alaska—Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975).
N.J.—American Fire and Cas. Co. v. New Jersey Div. of Taxation, 375 N.J. Super. 434, 868 A.2d 346 (App. Div. 2005), judgment aff'd, 189 N.J. 65, 912 A.2d 126 (2006).
Ohio—Associated Adjusters of Ohio, Inc. v. Ohio Dept. of Ins., 50 Ohio St. 2d 144, 4 Ohio Op. 3d 341, 6 Ohio Op. 3d 481, 6 Ohio Op. 3d 488, 363 N.E.2d 730 (1977).
Utah—Baker v. Matheson, 607 P.2d 233 (Utah 1979).

6 U.S.—City of New York v. Richardson, 473 F.2d 923 (2d Cir. 1973).
Cal.—Mallon v. City of Long Beach, 44 Cal. 2d 199, 282 P.2d 481 (1955).
Colo.—Enger v. Walker Field, Colorado Public Airport Authority, 181 Colo. 253, 508 P.2d 1245 (1973).

7 U.S.—Laborde-Garcia v. Puerto Rico Telephone Co., 734 F. Supp. 46 (D.P.R. 1990).

16B C.J.S. Constitutional Law § 1205

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

A. Constitutional Provisions

§ 1205. Article IV

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2935 to 2945, 2950, 2951, 2953, 2959

The privileges and immunities guaranty contained in Article IV of the Federal Constitution protects only citizens of a state in their natural capacity and applies only to persons, not to things. It requires each state to accord to citizens of other states the privileges and immunities to which its own citizens are entitled but does not operate as a limitation of a state's authority over its own citizens or give to citizens of other states greater privileges in a particular state than those enjoyed by its own citizens.

The privileges and immunities guaranty contained in Article IV of the Federal Constitution as originally adopted limits the power of a state to exclude citizens of other states from the privileges granted to its own citizens.[1] The clause forbids certain discriminations by a state against citizens of another state in favor if its own citizens[2] and is designed to insure to a citizen of one state who ventures into another state the same privileges which the citizens of such other state enjoy.[3] The provision requires each state to accord to the citizens of sister states the privileges and immunities to which its own citizens are entitled within its boundaries by reason of their state citizenship[4] although at times the character of the act may be so affected by the residence of the actor as to call for varying regulations with a view to the attainment in the end of a truer level of equality.[5]

This provision, which originally focused primarily upon fusing into one nation a collection of independent, sovereign states,[6] establishes a norm of comity that is to prevail among the states with respect to their treatment of each other's residents.[7] The word "citizens" as used in the Privileges and Immunities Clause of the Federal Constitution must be given the same meaning as that given to "citizens" in the Fourteenth Amendment.[8]

The Privileges and Immunities Clause seeks to prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit.[9] Thus, the Privileges and Immunities Clause protects the right of citizens to ply their trade, practice their occupation, or pursue a common calling.[10]

The guaranty does not deprive the states of their power to deal with the rights of residence or of ingress or egress therein.[11] A state is permitted to keep out nonresidents if they constitute a "peculiar source of evil."[12] For example, a state is permitted to keep out nonresidents who have been exposed to some communicable disease of which state is still substantially free.[13] Furthermore, the guaranty does not deprive a state of the power to deal with the rights of its residents[14] or to adopt laws defining certain acts as criminal, to provide penalties for the violation of the same, and to adopt procedural safeguards for the enforcement thereof.[15] It protects only those persons who are citizens of one of the states in the union.[16] Thus, it does not apply to aliens,[17] and it has been held inapplicable to citizens of the United States resident in an organized[18] or unorganized[19] territory of the United States. It protects people, not states,[20] and it does not apply to things[21] or corporations.[22]

The Privileges and Immunities Clause has no application to an exercise of power by the federal government,[23] and it in no way affects the powers of Congress over the territories and the District of Columbia.[24] The clause does not protect the right to access public information.[25] It does not affect the power of Congress to give the residents of territories and Indian reservations privileges and immunities not accorded to nonresidents thereof.[26] Furthermore, it was intended to protect the privileges of citizens against state action only, and not against the acts of individuals,[27] and it protects persons only in their natural capacity, and not in their capacity as members, officers, or agents of a corporation,[28] but it is applicable to the acts of cities as well as to those of states.[29]

The guaranty does not require that the rights of nonresidents at all times equal those of residents of a state;[30] only with respect to those privileges and immunities bearing upon the vitality of the nation as a single entity must a state treat all citizens, resident and nonresident, equally.[31] A state need not, when conferring a privilege or immunity on its own citizens, also confer the same privilege or immunity on citizens of other states.[32] There are privileges that may be accorded by a state to its own people, in which citizens of other states may not participate, except in conformity with such reasonable regulations as may be established by the state.[33] The Federal Constitution forbids only such legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when he or she is within or when he or she removes to another state.[34]

The Privileges and Immunities Clause bars discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states but does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it.[35] The inquiry in each case must be concerned with whether such reasons exist and whether the degree of discrimination bears a close relationship to them, with due regard for the principle that states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.[36] There is a two step inquiry for review of a privilege and immunities claim.[37] First, the activity in question must be sufficiently basic to the livelihood of the nation so as to fall within the purview of the Privileges and Immunities Clause.[38] Second, if the

restriction deprives nonresidents of a protected privilege, it will be invalidated only if the restriction is not closely related to the advancement of a substantial state interest.[39]

When confronted with a challenge under the Privileges and Immunities Clause to a law distinguishing between residents and nonresidents, the State may defend its position by demonstrating that there is a substantial reason for the difference in treatment and that the discrimination practiced against nonresidents bears a substantial relationship to the State's objective.[40]

Footnotes

1 U.S.—U.S. v. Wheeler, 254 U.S. 281, 41 S. Ct. 133, 65 L. Ed. 270 (1920) (disapproved of on other grounds by, U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)).
Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).

2 U.S.—White v. Thomas, 660 F.2d 680 (5th Cir. 1981).
Alaska—Sheley v. Alaska Bar Ass'n, 620 P.2d 640 (Alaska 1980).
Ill.—Rios v. Jones, 63 Ill. 2d 488, 348 N.E.2d 825 (1976).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).
Citizen of same state
Fourteenth Amendment's Privileges and Immunities Clause does not apply to a citizen of the state whose laws are complained of.
U.S.—Wang v. Pataki, 396 F. Supp. 2d 446 (S.D. N.Y. 2005).

3 U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); Hawaii Boating Ass'n v. Water Transp. Facilities Division, Dept. of Transp., State of Hawaii, 651 F.2d 661 (9th Cir. 1981).
Iowa—Borden v. Selden, 259 Iowa 808, 146 N.W.2d 306 (1966).
Utah—Baker v. Matheson, 607 P.2d 233 (Utah 1979).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

4 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
N.J.—State v. Nolfi, 141 N.J. Super. 528, 358 A.2d 853 (County Ct. 1976).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

5 U.S.—Toomer v. Witsell, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).
N.Y.—Smith v. Loughman, 245 N.Y. 486, 157 N.E. 753 (1927).

6 U.S.—Hawaii Boating Ass'n v. Water Transp. Facilities Division, Dept. of Transp., State of Hawaii, 651 F.2d 661 (9th Cir. 1981).
N.J.—Matter of Sackman, 90 N.J. 521, 448 A.2d 1014 (1982).

7 U.S.—Hicklin v. Orbeck, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

8 U.S.—Anderson v. Scholes, 12 Alaska 295, 83 F. Supp. 681 (Terr. Alaska 1949).

9 Alaska—Sheley v. Alaska Bar Ass'n, 620 P.2d 640 (Alaska 1980).

10 U.S.—McBurney v. Young, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).

11 U.S.—U.S. v. Wheeler, 254 U.S. 281, 41 S. Ct. 133, 65 L. Ed. 270 (1920) (disapproved of on other grounds by, U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)); Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 844 N.E.2d 623 (2006).

12 U.S.—W.C.M. Window Co., Inc. v. Bernardi, 730 F.2d 486 (7th Cir. 1984).

13 U.S.—W.C.M. Window Co., Inc. v. Bernardi, 730 F.2d 486 (7th Cir. 1984).

14 Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).

15 Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).
As to privileges and immunities guaranties as generally not applying to state statutes making certain acts crimes, see § 1230.

16 N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

17 Cal.—In re Johnson's Estate, 139 Cal. 532, 73 P. 424 (1903).

18 U.S.—Anderson v. Scholes, 12 Alaska 295, 83 F. Supp. 681 (Terr. Alaska 1949).

Cal.—In re Johnson's Estate, 139 Cal. 532, 73 P. 424 (1903).
Mont.—In re Colbert's Estate, 44 Mont. 259, 119 P. 791 (1911).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

19 Ark.—Sutton v. Hays, 17 Ark. 462, 1856 WL 603 (1856).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

20 U.S.—Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976).

21 Pa.—Shipper v. Pennsylvania R. Co., 47 Pa. 338, 1864 WL 4687 (1864).

22 U.S.—W.C.M. Window Co., Inc. v. Bernardi, 730 F.2d 486 (7th Cir. 1984).

23 U.S.—U.S. v. Gordon Kiyoshi Hirabayashi, 46 F. Supp. 657 (W.D. Wash. 1942).
N.H.—Appeal of New England Power Co., 120 N.H. 866, 424 A.2d 807 (1980), judgment rev'd on other grounds, 455 U.S. 331, 102 S. Ct. 1096, 71 L. Ed. 2d 188 (1982).

24 U.S.—Duehay v. Acacia Mut. Life Ins. Co., 105 F.2d 768, 124 A.L.R. 1268 (App. D.C. 1939); Lung v. O'Cheskey, 358 F. Supp. 928 (D.N.M. 1973), judgment aff'd, 414 U.S. 802, 94 S. Ct. 159, 38 L. Ed. 2d 39 (1973).

25 U.S.—McBurney v. Young, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).

26 Ind.T.—McFadden v. Blocker, 3 Indian Terr. 224, 54 S.W. 873 (Indian Terr. 1900).

27 U.S.—U.S. v. Wheeler, 254 U.S. 281, 41 S. Ct. 133, 65 L. Ed. 270 (1920) (disapproved of on other grounds by, U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)).
Cal.—Archibald v. Cinerama Hawaiian Hotels, Inc., 73 Cal. App. 3d 152, 140 Cal. Rptr. 599 (3d Dist. 1977) (disapproved of on other grounds by, Koire v. Metro Car Wash, 40 Cal. 3d 24, 219 Cal. Rptr. 133, 707 P.2d 195 (1985)).

28 Va.—Slaughter v. Commonwealth, 54 Va. 767, 13 Gratt. 767, 1856 WL 3512 (1856).

29 U.S.—United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984).

30 U.S.—Kreitzer v. Puerto Rico Cars, Inc., 417 F. Supp. 498 (D.P.R. 1975).
Alaska—Sheley v. Alaska Bar Ass'n, 620 P.2d 640 (Alaska 1980).
N.D.—Benson v. Schneider, 68 N.W.2d 665 (N.D. 1955).
N.Y.—Golden v. Tully, 88 A.D.2d 1058, 452 N.Y.S.2d 748 (3d Dep't 1982), judgment aff'd, 58 N.Y.2d 1047, 462 N.Y.S.2d 626, 449 N.E.2d 406 (1983).

31 U.S.—Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).
Alaska—Noll v. Alaska Bar Ass'n, 649 P.2d 241 (Alaska 1982); Sheley v. Alaska Bar Ass'n, 620 P.2d 640 (Alaska 1980).
N.J.—Matter of Sackman, 90 N.J. 521, 448 A.2d 1014 (1982).
Utah—Baker v. Matheson, 607 P.2d 233 (Utah 1979).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

32 U.S.—Blake v. McClung, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898); Duehay v. Acacia Mut. Life Ins. Co., 105 F.2d 768, 124 A.L.R. 1268 (App. D.C. 1939).
Cal.—In re Johnson's Estate, 139 Cal. 532, 73 P. 424 (1903).

33 Ariz.—Arizona Bd. of Regents v. Harper, 108 Ariz. 223, 495 P.2d 453, 56 A.L.R.3d 627 (1972).
Cal.—Kirk v. Board of Regents of University of Cal., 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1st Dist. 1969).
Utah—Baker v. Matheson, 607 P.2d 233 (Utah 1979).

34 U.S.—Blake v. McClung, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898); Duehay v. Acacia Mut. Life Ins. Co., 105 F.2d 768, 124 A.L.R. 1268 (App. D.C. 1939).
N.J.—State v. Nolfi, 141 N.J. Super. 528, 358 A.2d 853 (County Ct. 1976).

35 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265 (3d Cir. 1994).

36 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).

37 U.S.—Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988); Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265 (3d Cir. 1994).

38 U.S.—Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988); Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265 (3d Cir. 1994).

39 U.S.—Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988).

40 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265 (3d Cir. 1994).

End of Document

16B C.J.S. Constitutional Law § 1206

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

A. Constitutional Provisions

§ 1206. Article IV—Nature of protected privileges and immunities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2935 to 2945, 2950, 2951, 2953, 2959

The privileges and immunities protected by the constitutional guaranty are the fundamental privileges of citizenship.

The privileges and immunities protected by Article IV of the Federal Constitution are the fundamental privileges of citizenship.[1] These include the right to pass freely from one state to another;[2] to secure citizens of one state the right to resort to the courts of another, equally with the citizens of the latter state;[3] to pursue a livelihood in such other state;[4] and to seek medical services available therein.[5] However, the clause in question does not take away from the states the power to regulate the right of succession to property.[6]

The legislature has no power to impose burdens on citizens of other states that are not imposed on citizens of its own state;[7] but, if a statute gives benefits to the citizens of the state, the constitutional provision merely extends the benefits to noncitizens.[8] A state does not have the power to impose burdens on goods produced in other states that are not laid on similar goods produced in its own state,[9] and it may not deny to citizens of other states the right to acquire and hold property in the same manner as a citizen of the state where the property is situated.[10]

This clause of the Federal Constitution, however, refers to privileges and immunities which the citizens of the several states enjoy as citizens of the United States and has no relation to privileges and immunities appertaining to citizenship in the states as distinguished from citizenship in the United States;[11] it does not operate as a limitation of the authority of a state over its own citizens.[12] The guaranty does not extend to any right enjoyed otherwise than by reason of citizenship,[13] such as rights growing out of residence,[14] since the terms "citizenship" and "residence" are not synonymous.[15] However, generally it has been held that for purposes of analysis under the Privileges and Immunities Clause, there is not a meaningful distinction between "citizenship" and "residence."[16]

The clause does not extend to political privileges, such as the right to vote and to hold office.[17] Rights attached by law to contracts by reason of the place where such contracts are made or executed, irrespective of the citizenship of the parties, cannot be deemed "privileges of a citizen" within the meaning of the United States Constitution.[18] Such guaranty does not give to citizens of other states greater privileges in a particular state than those enjoyed by its own citizens,[19] but, rather, it merely forbids arbitrary distinctions against citizens of other states.[20] Although the Privileges and Immunities Clause establishes a norm of comity, it does not specify the particular subjects as to which citizens of one state coming within the jurisdiction of another are guaranteed equality of treatment.[21]

The Federal Constitution does not give the laws of any one state the slightest force in another state[22] or guarantee to citizens of one state rights in another state which they would have if resident in such latter state.[23] Special privileges enjoyed by citizens in their own states are not secured to them in other states by such guaranty.[24] The provision in question does not give a citizen the right to complain that the laws of the state are more favorable to citizens of another state.[25]

The right to participate in interscholastic sports is not a fundamental privilege within the meaning of the privileges and immunities guaranty, and thus, a bylaw of the high school athletic association barring nonresident students from participation in the state's interscholastic sports did not violate the Privileges and Immunities Clause.[26]

Extradition.

Paragraph Two of the Privileges and Immunities Clause, relating to extradition, does not protect from arrest in one state, a person charged with the commission of a crime in another state.[27]

CUMULATIVE SUPPLEMENT

Cases:

The Privileges and Immunities Clause establishes a norm of comity without specifying the particular subjects as to which citizens of one state coming within the jurisdiction of another are guaranteed equality of treatment. U.S. Const. art. 4, § 2, cl. 1. Dunn v. Idaho State Tax Commission, 403 P.3d 309 (Idaho 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Maxwell v. Bugbee, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919); Duehay v. Acacia Mut. Life Ins. Co., 105 F.2d 768, 124 A.L.R. 1268 (App. D.C. 1939).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).
Wash.—Northwest Gillnetters Ass'n v. Sandison, 95 Wash. 2d 638, 628 P.2d 800 (1981).
Wis.—Bode v. Flynn, 213 Wis. 509, 252 N.W. 284, 94 A.L.R. 480 (1934).

2 U.S.—Maxwell v. Bugbee, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919).
Cal.—In re King, 3 Cal. 3d 226, 90 Cal. Rptr. 15, 474 P.2d 983 (1970).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).
Pa.—Stoner v. Higginson, 316 Pa. 481, 175 A. 527 (1934).

3 U.S.—McBurney v. Young, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).

4 U.S.—Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).
Alaska—Sheley v. Alaska Bar Ass'n, 620 P.2d 640 (Alaska 1980).

5 U.S.—Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); Smith v. Bentley, 493 F. Supp. 916 (E.D. Ark. 1980).

6 Ill.—People v. O'Donnell, 327 Ill. 474, 158 N.E. 727 (1927).

7 Cal.—Quong Ham Wah Co., v. Industrial Acc. Commission of Cal., 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190 (1920).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

8 Cal.—Quong Ham Wah Co., v. Industrial Acc. Commission of Cal., 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190 (1920).

9 U.S.—William R. Compton Co. v. Allen, 216 F. 537 (S.D. Iowa 1914).

10 Ind.—Brown-Ketcham Iron Works v. George B. Swift Co., 53 Ind. App. 630, 100 N.E. 584 (1913).

11 U.S.—Reconstruction Finance Corp. v. Marks, 42 F. Supp. 477 (N.D. W. Va. 1941).
Ill.—Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948).
Iowa—Olander v. Hollowell, 193 Iowa 979, 188 N.W. 667 (1922).
Ky.—Hensley v. Hensley, 286 Ky. 378, 151 S.W.2d 69 (1941).

12 U.S.—Duehay v. Acacia Mut. Life Ins. Co., 105 F.2d 768, 124 A.L.R. 1268 (App. D.C. 1939); Hughes v. Caddo Parish School Bd., 57 F. Supp. 508 (W.D. La. 1944), judgment aff'd, 323 U.S. 685, 65 S. Ct. 562, 89 L. Ed. 554 (1945).
Ala.—Weil v. State, 237 Ala. 293, 186 So. 467 (1939).
N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

13 U.S.—Conner v. Elliott, 59 U.S. 591, 18 How. 591, 15 L. Ed. 497, 1855 WL 8210 (1855).

14 U.S.—La Tourette v. McMaster, 248 U.S. 465, 39 S. Ct. 160, 63 L. Ed. 362 (1919).

15 C.J.S., Citizens § 3.

16 U.S.—Austin v. New Hampshire, 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975).
S.C.—Spencer v. South Carolina Tax Com'n, 281 S.C. 492, 316 S.E.2d 386 (1984), judgment aff'd, 471 U.S. 82, 105 S. Ct. 1859, 85 L. Ed. 2d 62 (1985).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

17 Cal.—Van Valkenburg v. Brown, 43 Cal. 43, 1872 WL 1120 (1872).
Conn.—State v. Dinsmore, 34 Conn. Supp. 674, 388 A.2d 439 (Super. Ct. 1977).
N.Y.—Gordon v. Committee on Character and Fitness, 48 N.Y.2d 266, 422 N.Y.S.2d 641, 397 N.E.2d 1309 (1979).
Va.—Murray v. McCarty, 16 Va. 393, 2 Munf. 393, 1811 WL 687 (1811).

18 U.S.—Conner v. Elliott, 59 U.S. 591, 18 How. 591, 15 L. Ed. 497, 1855 WL 8210 (1855).

19 U.S.—Richter v. East St. Louis & S. Ry. Co., 20 F.2d 220 (E.D. Mo. 1927).
Ill.—People ex rel. Kahn v. Meyering, 348 Ill. 486, 181 N.E. 300 (1932).

20 U.S.—Richter v. East St. Louis & S. Ry. Co., 20 F.2d 220 (E.D. Mo. 1927); Blass v. Weigel, 85 F. Supp. 775 (D.N.J. 1949).

21 U.S.—McBurney v. Young, 667 F.3d 454 (4th Cir. 2012), aff'd, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).

22 Ill.—Dougherty v. American McKenna Process Co., 255 Ill. 369, 99 N.E. 619 (1912).
Ky.—Commonwealth v. Milton, 51 Ky. 212, 12 B. Mon. 212, 1851 WL 3409 (1851).

23 N.J.—McCarter v. Hudson County Water Co., 70 N.J. Eq. 695, 65 A. 489 (Ct. Err. & App. 1906).

24 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
N.Y.—People v. Griswold, 213 N.Y. 92, 106 N.E. 929 (1914).

25 N.Y.—In re Davison's Estate, 137 Misc. 852, 244 N.Y.S. 616 (Sur. Ct. 1930), aff'd, 236 A.D. 684, 258 N.Y.S. 42 (2d Dep't 1932).

26 U.S.—Alerding v. Ohio High School Athletic Ass'n, 779 F.2d 315, 29 Ed. Law Rep. 61 (6th Cir. 1985).

27 U.S.—Burton v. New York Cent. & H.R.R. Co., 245 U.S. 315, 38 S. Ct. 108, 62 L. Ed. 314 (1917).

End of Document

16B C.J.S. Constitutional Law § 1207

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

A. Constitutional Provisions

§ 1207. Fourteenth Amendment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2910 to 2916, 2920, 2922 to 2926, 2929 to 2931

The privileges and immunities protected by the Fourteenth Amendment are only those arising under the Constitution and laws of the United States and not those accruing from state citizenship.

A statute which abridges privileges or immunities of citizens of the United States is unconstitutional under the Fourteenth Amendment to the Federal Constitution.[1] The Fourteenth Amendment does not forbid all discrimination or inequality, and certain privileges may be granted some and denied to others, under some circumstances, if they are granted or denied on the same terms and if there exists a reasonable basis therefor.[2] The privileges and immunities protected by this clause of the United States Constitution are only those which owe their existence to the federal government, its national character, its Constitution, or its laws,[3] and not such rights as accrue from state citizenship.[4]

These privileges and immunities include the right of ingress and egress from state to state[5] and the right to protection on the high seas and in foreign countries.[6] Such privileges and immunities include also the right to use the streets and public places,[7] the right peaceably to assemble,[8] the right to the enjoyment of life and liberty, to acquire and possess property of every kind, and to pursue

happiness and safety.[9] Additionally, the guaranty of the rights and immunities of a citizen insures to him or her the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked.[10]

Such privileges and immunities do not include the right to be secure in one's house,[11] the right to exemption from unreasonable searches and seizures,[12] protection against false imprisonment by state officers,[13] and the right to attend the public schools of the state.[14] They also do not include the right to succeed to property[15] or the right to fish in the state's waters.[16] They further do not include the right to act as an agent of a foreign corporation prohibited from doing business in the state,[17] the right to trial by jury in a suit at common law,[18] the right to practice law in the state courts,[19] or the right of suffrage or the right to vote as in a local bond election.[20] Still yet not included is the right to become a candidate for,[21] or to hold,[22] a state office, or the right of a state to legislate on the question of elections generally.[23]

The exemption from self-incrimination is not one of the privileges and immunities of citizens of the United States which the Fourteenth Amendment to the Federal Constitution forbids the states to abridge.[24] Such amendment does not prevent a state from prescribing the qualifications of jurors, provided no discrimination is made because of race or color.[25]

The guaranty contained in the Federal Constitution requires a state to give a citizen of the United States who becomes a bona fide resident of the state the rights, privileges, and immunities secured by the state constitution to the state's own citizens.[26] However, such guaranty does not entitle a person to enjoy in his or her own state privileges which citizens of other states enjoy under the laws of their respective states,[27] or to enjoy in another state privileges which he or she enjoys in the home state,[28] or any other or greater privileges than those enjoyed by the citizens of such other state.[29]

Such constitutional provision operates only as a protection against state action,[30] which may include action by a municipal corporation.[31] However, it does not operate to protect against action by individuals[32] or by the federal government.[33]

The rights which a citizen enjoys by reason of United States citizenship are protected against the action of his or her own state as well as against that of other states in which he or she may happen to be.[34] The provision applies to all citizens of the United States, wherever domiciled,[35] and a state cannot abridge privileges of a citizen of the United States even though he or she is a resident of the state which undertakes to do so.[36] No new privileges and immunities are conferred on citizens by the Amendment but, rather, it simply provides an additional guaranty for the enforcement of those already existing.[37]

CUMULATIVE SUPPLEMENT

Cases:

The Fourteenth Amendment, U.S.C.A. is not intended to protect individual rights against individual invasion, but to nullify and make void all state legislation and state action which impairs the privileges of citizens of the United States, etc.; and therefore Congress has no authority to create a code of municipal law for the regulation of private rights. Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

Residency requirement of Texas statute, which provided certain Texas veterans with tuition waivers at public universities if they enlisted in Texas or were residents of Texas at the time they enlisted, did not infringe right to travel under Fourteenth Amendment's Privileges and Immunities Clause of veteran who was a Texas resident attending a Texas law school, but had enlisted in Georgia while a Georgia resident; statute imposed no penalty on new entrants to the state, and even if it did, residency

requirement was justified because the tuition was a portable benefit that could be received in Texas and enjoyed long thereafter if the recipient chose to immediately leave the state. U.S. Const. Amend. 14. Harris v. Hahn, 827 F.3d 359 (5th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Apodaca v. U.S., 188 F.2d 932 (10th Cir. 1951).
Ala.—Alabama Public Service Commission v. Mobile Gas Co., 213 Ala. 50, 104 So. 538, 41 A.L.R. 872 (1925).
Cal.—People v. Gidaly, 35 Cal. App. 2d Supp. 758, 93 P.2d 660 (App. Dep't Super. Ct. 1939).
Haw.—State v. Johnston, 51 Haw. 195, 51 Haw. 259, 456 P.2d 805 (1969).

2 Ariz.—Schrey v. Allison Steel Mfg. Co., 75 Ariz. 282, 255 P.2d 604 (1953).
S.D.—Clem v. City of Yankton, 83 S.D. 386, 160 N.W.2d 125 (1968).
Wash.—Sparkman & McLean Co. v. Govan Inv. Trust, 78 Wash. 2d 584, 478 P.2d 232 (1970).

3 U.S.—Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).
Ariz.—Valley Nat. Bank of Phoenix v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945).
Conn.—State v. Dinsmore, 34 Conn. Supp. 674, 388 A.2d 439 (Super. Ct. 1977).
Ga.—Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).
Or.—Thompson v. Dickson, 202 Or. 394, 275 P.2d 749 (1954).
R.I.—Morrison v. Lamarre, 75 R.I. 176, 65 A.2d 217 (1949).
Wis.—Weinberg v. Kluchesky, 236 Wis. 99, 294 N.W. 530 (1940).

4 U.S.—Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944); Perez Gonzalez v. Irizarry, 387 F. Supp. 942 (D.P.R. 1974).
Cal.—Steiner v. Darby, 88 Cal. App. 2d 481, 199 P.2d 429 (2d Dist. 1948).
Ga.—Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).
Or.—Thompson v. Dickson, 202 Or. 394, 275 P.2d 749 (1954).
R.I.—Morrison v. Lamarre, 75 R.I. 176, 65 A.2d 217 (1949).
Wis.—Weinberg v. Kluchesky, 236 Wis. 99, 294 N.W. 530 (1940).

5 U.S.—Jenkins v. McCollum, 446 F. Supp. 667 (N.D. Ala. 1978).
N.Y.—Matter of Kathie L., 100 Misc. 2d 173, 418 N.Y.S.2d 859 (Fam. Ct. 1979).
Right to travel, generally, see § 786.

6 U.S.—Charge to Grand Jury, 30 F. Cas. 1005, No. 18260 (C.C.W.D. Tenn. 1875).

7 U.S.—Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969).
Ohio—City of Cleveland v. Tussey, 27 Ohio Op. 367, 39 Ohio L. Abs. 554, 13 Ohio Supp. 11 (Mun. Ct. 1943).

8 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).

9 U.S.—Valle v. Stengel, 176 F.2d 697 (3d Cir. 1949).
Pa.—In re Harrison's Estate, 23 Pa. Dist. 605, 1914 WL 4477 (Pa. Orphans' Ct. 1914), aff'd, 250 Pa. 129, 95 A. 406 (1915).

10 U.S.—Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).
Ill.—Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948).
Felons
The Fourteenth Amendment authorized complete abrogation of felons' voting rights, and thus, Tennessee's reenfranchisement statute could not have violated the Privileges and Immunities Clause by conditioning felons' reenfranchisement on the payment of victim restitution and child support obligations.
U.S.—Johnson v. Bredesen, 624 F.3d 742 (6th Cir. 2010).

11 Ga.—Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).

12 Ga.—Johnson v. State, 152 Ga. 271, 109 S.E. 662, 19 A.L.R. 641 (1921); Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).

13 U.S.—Watkins v. Oaklawn Jockey Club, 86 F. Supp. 1006 (W.D. Ark. 1949), judgment aff'd, 183 F.2d 440 (8th Cir. 1950).

14 Cal.—Ward v. Flood, 48 Cal. 36, 1874 WL 1216 (1874).

15 Ga.—Pettiford v. Frazier, 226 Ga. 438, 175 S.E.2d 549 (1970).
Ill.—People v. O'Donnell, 327 Ill. 474, 158 N.E. 727 (1927).

16 U.S.—Thomson v. Dana, 52 F.2d 759 (D. Or. 1931), aff'd, 285 U.S. 529, 52 S. Ct. 409, 76 L. Ed. 925 (1932).
Mich.—People v. Zimberg, 321 Mich. 655, 33 N.W.2d 104 (1948).

17 N.J.—Hickman v. State, 62 N.J.L. 499, 41 A. 942 (N.J. Sup. Ct. 1898), aff'd, 63 N.J.L. 666, 44 A. 1099 (N.J. Ct. Err. & App. 1899).

18 Tex.—Wooten v. Dallas Hunting & Fishing Club, Inc., 427 S.W.2d 344 (Tex. Civ. App. Dallas 1968).

19 Neb.—State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302, 144 A.L.R. 138 (1942).
N.C.—Baker v. Varser, 240 N.C. 260, 82 S.E.2d 90 (1954).
Utah—Ruckenbrod v. Mullins, 102 Utah 548, 133 P.2d 325, 144 A.L.R. 839 (1943).

20 Ga.—Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221 (1949).
Mo.—State ex inf. McKittrick ex rel. Ham v. Kirby, 349 Mo. 988, 163 S.W.2d 990 (1942).
R.I.—Morrison v. Lamarre, 75 R.I. 176, 65 A.2d 217 (1949).

21 U.S.—Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944); Heiser v. Rhodes, 305 F. Supp. 269, 24 Ohio Misc. 185, 51 Ohio Op. 2d 370, 53 Ohio Op. 2d 257 (S.D. Ohio 1969).
R.I.—Morrison v. Lamarre, 75 R.I. 176, 65 A.2d 217 (1949).

22 U.S.—Thomas v. Mims, 317 F. Supp. 179 (S.D. Ala. 1970).
Ala.—McCullough v. State ex rel. Burrell, 352 So. 2d 1121 (Ala. 1977).

23 U.S.—Pirtle v. Brown, 118 F.2d 218, 139 A.L.R. 557 (C.C.A. 6th Cir. 1941).
Ill.—People ex rel. Gash v. Sweitzer, 282 Ill. 171, 118 N.E. 477 (1917).
Neb.—State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

24 U.S.—In re Tracy & Co., 177 F. 532 (S.D. N.Y. 1910).
Ga.—Hysler v. State, 148 Ga. 409, 96 S.E. 884 (1918).
Ind.—Voelker v. Tyndall, 226 Ind. 43, 75 N.E.2d 548 (1947).

25 U.S.—Jackanin v. Carey, 476 F. Supp. 420 (E.D. N.Y. 1979), aff'd, 633 F.2d 204 (2d Cir. 1980).
Haw.—State v. Johnston, 51 Haw. 195, 51 Haw. 259, 456 P.2d 805 (1969).
Ky.—Owens v. Commonwealth, 188 Ky. 498, 222 S.W. 524 (1920).

26 U.S.—Henderson v. U.S., 63 F. Supp. 906 (D. Md. 1945).
Ariz.—Valley Nat. Bank of Phoenix v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945).
Ind.—State v. Griffin, 226 Ind. 279, 79 N.E.2d 537 (1948).

27 Ind.—Mutual Mfg. Co. v. Alspaugh, 174 Ind. 381, 91 N.E. 504 (1910).

28 Ind.—Mutual Mfg. Co. v. Alspaugh, 174 Ind. 381, 91 N.E. 504 (1910).

29 Ala.—Brown v. City of Birmingham, 140 Ala. 590, 37 So. 173 (1904).
Cal.—Starr v. Starr, 121 Cal. App. 2d 633, 263 P.2d 675 (3d Dist. 1953) (disapproved of on other grounds by, Kulko v. Superior Court, 19 Cal. 3d 514, 138 Cal. Rptr. 586, 564 P.2d 353 (1977)).

30 U.S.—Powe v. U.S., 109 F.2d 147 (C.C.A. 5th Cir. 1940).
Ohio—Colbert v. Coney Island, Inc., 97 Ohio App. 311, 56 Ohio Op. 106, 121 N.E.2d 911 (1st Dist. Hamilton County 1954).

31 U.S.—Whisler v. City of West Plains, Mo., 43 F. Supp. 654 (W.D. Mo. 1942), judgment aff'd, 137 F.2d 938 (C.C.A. 8th Cir. 1943).
Pa.—Com. v. Vuletich, 42 Pa. D. & C. 208, 1941 WL 3057 (Quar. Sess. 1941).

32 U.S.—Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950).
Ohio—Colbert v. Coney Island, Inc., 97 Ohio App. 311, 56 Ohio Op. 106, 121 N.E.2d 911 (1st Dist. Hamilton County 1954).

33 U.S.—Mulligan v. U.S., 120 F. 98 (C.C.A. 8th Cir. 1903); Farrell v. U S, 110 F. 942 (C.C.A. 8th Cir. 1901).

34 U.S.—Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co., 1 Abbott 388, 15 F. Cas. 649, No. 8408 (C.C.D. La. 1870).

35 U.S.—Feely v. Sidney S. Schupper Interstate Hauling System, 72 F. Supp. 663 (D. Md. 1947).

36 Ind.—Greathouse v. Board of School Com'rs of City of Indianapolis, 198 Ind. 95, 151 N.E. 411 (1926).

37 U.S.—Henderson v. U.S., 63 F. Supp. 906 (D. Md. 1945).
Minn.—State ex rel. Smiley v. Holm, 184 Minn. 228, 238 N.W. 494 (1931).
W. Va.—Hinebaugh v. James, 119 W. Va. 162, 192 S.E. 177, 112 A.L.R. 59 (1937).

Positive grant of legislative power

Enforcement clause of Fourteenth Amendment is positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure guaranties of such Amendment. However, such power is limited to adopting measures to enforce guaranties of amendment, and such clause grants Congress no power to restrict, abrogate, or dilute such guaranties.
U.S.—Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).

End of Document

16B C.J.S. Constitutional Law VI XV B Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Fourteenth Amendment
A.L.R. Index, Privileges and Immunities
West's A.L.R. Digest, Constitutional Law 2860, 2861, 2863 to 2868, 2870, 2871, 2873 to 2878, 2880 to 2885, 2887 to 2890, 2892, 2894, 2896 to 2907

End of Document

16B C.J.S. Constitutional Law § 1208

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

1. In General

§ 1208. Constitutional prohibition

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2860, 2861, 2863 to 2868, 2870, 2871, 2873 to 2878, 2880 to 2885, 2887 to 2890, 2892, 2894, 2896 to 2907

The grant of special privileges or immunities to individuals or to classes of people is commonly forbidden by express provisions of the state constitutions.

The constitutions in some states forbid the grant to any citizen or class of citizens of privileges not belonging equally to all citizens.[1] In other states, constitutional provisions forbid the grant of exclusive separate public emoluments or privileges to any person or set of persons,[2] except in consideration of public services[3] which directly affect the public,[4] and in still other states they prohibit the grant of any irrevocable privilege or immunity.[5]

Such provisions are the antithesis of the Fourteenth Amendment in that they prevent the enlargement of the rights of some in discrimination against the rights of others while the Fourteenth Amendment prevents the curtailment of rights.[6] These provisions are said to have a like meaning to the Fourteenth Amendment which prohibits states from denying to any person the equal protection of the laws.[7] The same tests apply in determining whether a law violates state constitutional provisions prohibiting the enactment of any law granting special privileges or immunities as apply in determining whether it violates the guaranty

under the Fourteenth Amendment of equal protection of the laws.[8] While the privileges and immunities clause of the state constitution bears similarities to the Federal Equal Protection Clause, under state law, the privileges and immunities clause should be given independent interpretation and application.[9]

The purpose of constitutional provisions relating to special privileges is to secure equality of opportunity to all persons similarly situated.[10] Such a provision, which bars preferential treatment for specific persons or interests by the legislature,[11] must be construed in the light of the past history of the states.[12] As long as a law operates alike on all members of a class, including those similarly situated, it does not violate the constitutional provisions.[13]

The word "law" in the constitutional prohibition of any law granting special privileges or immunities includes a rule made by administrative authority[14] while the word "privilege" means a particular and peculiar benefit or advantage enjoyed by a person, company, or class beyond the common advantage of other citizens.[15] The phrase "special privileges" within the meaning of the constitutional prohibition of the grant of any special privileges or immunities means a right, power, franchise, immunity, or privilege granted to, or vested in, a person or class of persons to the exclusion of others and in derogation of the common right.[16]

An "immunity" within the meaning of these constitutional provisions is freedom from duty or penalty.[17] The term "public services" within the constitutional provision forbidding the grant of exclusive privileges except in consideration of public services means such services previously rendered and not merely contemplated services to be rendered.[18] Statutes which are reasonably designed to protect health, morals, or public welfare do not violate constitutional prohibitions.[19]

While the grant of special or exclusive privileges for private benefit is within constitutional prohibitions,[20] a constitution does not forbid the grant of special or exclusive privileges, even those which are essentially monopolistic in character, where the primary purpose of the grant is not the private benefit of the grantees, but the promotion of the public interest,[21] provided the statute operates uniformly on all those of the designated class.[22]

The main object of a statute should not be circumvented and condemned because some mere incidental and inconsequential benefit may be derived by private persons from the operation of the statute.[23] If an act serves a proper public purpose, the fact that it incidentally confers a direct benefit on some individual or individuals,[24] or adversely affects a few individuals,[25] does not render it invalid. However, a legislative act which serves no purpose other than individual gain or profit goes beyond the power of that body to enact and is necessarily void.[26]

Whether a statutory provision serves a public purpose rests in the sound judgment of the legislature, and the courts should not override the legislature's conclusion if that can be supported on any reasonable ground.[27] On the other hand, if legislation directs the granting of an emolument or privilege to an individual or class without any purpose, expressed or apparent, to serve the public welfare thereby, the courts have a duty to declare such legislation unconstitutional.[28] In determining whether a statute offends the constitutional provision that a local act may not grant special privileges or immunities, the reason for the discrimination need not affirmatively appear on the face of the statute but it must exist.[29]

State constitutional provisions apply only to citizens of the state[30] and not to aliens.[31] A state board of health, being a branch of the state executive department, is not a corporation, association, or individual within a constitutional provision forbidding a grant of special or exclusive privileges to corporations, associations, or individuals.[32] A state, where its public policy is involved, should not grant or give to some person temporarily within the state rights and privileges that it refuses to give or grant to its own citizens.[33]

The constitutional prohibition against the grant of special public emoluments or privileges should not be too strictly interpreted,[34] lest the public service and public welfare suffer.[35] Rights acquired prior to the adoption of the constitution are not revoked thereby.[36]

The constitutional guaranty to all persons of equality of rights applies to political rights.[37]

CUMULATIVE SUPPLEMENT

Cases:

The independent analysis for claims arising under the state constitutional privileges and immunities clause applies only where a law implicates a privilege or immunity as defined in cases distinguishing the fundamental rights of state citizenship; in such situations, the court first asks whether a challenged law grants a privilege or immunity for purposes of the state constitution, and then whether there is a reasonable ground for granting that privilege or immunity. Wash. Const. art. 1, § 12. Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 475 P.3d 164 (Wash. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Ariz.—Schrey v. Allison Steel Mfg. Co., 75 Ariz. 282, 255 P.2d 604 (1953).
Ark.—City of Springdale v. Chandler, 222 Ark. 167, 257 S.W.2d 934 (1953).
Cal.—Hollman v. Warren, 32 Cal. 2d 351, 196 P.2d 562 (1948).
Ind.—Hanley v. State, 234 Ind. 326, 123 N.E.2d 452 (1954).
Iowa—John R. Grubb, Inc. v. Iowa Housing Finance Authority, 255 N.W.2d 89 (Iowa 1977).
N.M.—State ex rel. State Game Commission v. Red River Valley Co., 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421 (1945).
Ohio—State v. Smith, 48 Ohio Op. 310, 63 Ohio L. Abs. 452, 108 N.E.2d 582 (Mun. Ct. 1952).
Or.—American Can Co. v. Oregon Liquor Control Commission, 15 Or. App. 618, 517 P.2d 691 (1973).
S.C.—Lee v. Clark, 224 S.C. 138, 77 S.E.2d 485 (1953).
Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).
Wash.—State v. Nixon, 10 Wash. App. 355, 517 P.2d 212 (Div. 1 1973).

2 Conn.—Tolisano v. State, 19 Conn. Supp. 266, 111 A.2d 562 (Super. Ct. 1954).

3 Ky.—Department of Revenue ex rel. Allphin v. Turner, 260 S.W.2d 658 (Ky. 1953).
N.C.—State ex rel. Taylor v. Carolina Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).
Tex.—Friedman v. American Sur. Co. of New York, 137 Tex. 149, 151 S.W.2d 570 (1941).

4 Ky.—Reid v. Robertson, 304 Ky. 509, 200 S.W.2d 900 (1947).

5 Ala.—Franklin Solid Waste Services, Inc. v. Jones, 354 So. 2d 4 (Ala. 1977).
Colo.—Peterson v. McNichols, 128 Colo. 137, 260 P.2d 938 (1953).
Idaho—State v. Heitz, 72 Idaho 107, 238 P.2d 439 (1951).
Ill.—Kittay v. Allstate Ins. Co., 78 Ill. App. 3d 335, 33 Ill. Dec. 867, 397 N.E.2d 200 (1st Dist. 1979).
Mont.—Carkulis v. Doe, 164 Mont. 315, 521 P.2d 1305 (1974).

6 Idaho—Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976).
Ky.—Reeves v. Simons, 289 Ky. 793, 160 S.W.2d 149 (1942).
Or.—State ex rel. Reed v. Schwab, 287 Or. 411, 600 P.2d 387, 24 A.L.R.4th 422 (1979).

7 Cal.—Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187 (1971).
N.D.—Southern Valley Grain Dealers Ass'n v. Board of County Com'rs of Richland County, 257 N.W.2d 425 (N.D. 1977).

Or.—Cooper v. Oregon School Activities Ass'n, 52 Or. App. 425, 629 P.2d 386, 15 A.L.R.4th 869 (1981).

Equal protection of the laws, generally, see §§ 700 et seq.

8 Cal.—Gray v. Whitmore, 17 Cal. App. 3d 1, 94 Cal. Rptr. 904 (1st Dist. 1971).

Or.—City of Klamath Falls v. Winters, 289 Or. 757, 619 P.2d 217 (1980).

Wash.—Housing Authority of King County v. Saylors, 87 Wash. 2d 732, 557 P.2d 321 (1976).

Requirements

Under a particular state constitution, two requirements are imposed upon statutes that grant unequal privileges or immunities to differing classes of persons; first, the disparate treatment accorded by legislation must be reasonably related to inherent characteristics which distinguish the unequally treated classes; and second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated.

Ind.—Collins v. Day, 644 N.E.2d 72 (Ind. 1994).

9 U.S.—Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013).

10 Ill.—Gaca v. City of Chicago, 411 Ill. 146, 103 N.E.2d 617 (1952).

Kan.—State v. Young, 200 Kan. 20, 434 P.2d 820 (1967).

N.H.—Gazzola v. Clements, 120 N.H. 25, 411 A.2d 147 (1980).

Okla.—Kimery v. Public Service Co. of Oklahoma, 1980 OK 187, 622 P.2d 1066 (Okla. 1980).

Wash.—State v. Nixon, 10 Wash. App. 355, 517 P.2d 212 (Div. 1 1973).

11 Or.—American Can Co. v. Oregon Liquor Control Commission, 15 Or. App. 618, 517 P.2d 691 (1973).

12 N.C.—Hinton v. Lacy, 193 N.C. 496, 137 S.E. 669 (1927).

13 Iowa—John R. Grubb, Inc. v. Iowa Housing Finance Authority, 255 N.W.2d 89 (Iowa 1977).

Wash.—Reedy v. Reedy, 12 Wash. App. 844, 532 P.2d 626 (Div. 1 1975).

14 Wash.—Inman v. Sandvig, 170 Wash. 112, 15 P.2d 696 (1932).

15 Cal.—Daigh v. Schaffer, 23 Cal. App. 2d 449, 73 P.2d 927 (3d Dist. 1937).

Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).

16 Ala.—City of Bessemer v. Birmingham Elec. Co., 248 Ala. 345, 27 So. 2d 565 (1946).

Wyo.—Pirie v. Kamps, 68 Wyo. 83, 229 P.2d 927, 26 A.L.R.2d 647 (1951).

Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).

17 Ariz.—Leatherwood v. Hill, 10 Ariz. 243, 89 P. 521 (1906).

Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).

18 Ky.—Harrison v. Big Four Bus Lines, 217 Ky. 119, 288 S.W. 1049 (1926).

N.C.—State v. Felton, 239 N.C. 575, 80 S.E.2d 625 (1954).

19 Conn.—Barnes v. City of New Haven, 140 Conn. 8, 98 A.2d 523 (1953).

Fla.—Liquor Store v. Continental Distilling Corp., 40 So. 2d 371 (Fla. 1949).

Ind.—Hanley v. State, 234 Ind. 326, 123 N.E.2d 452 (1954).

Or.—Anthony v. Veatch, 189 Or. 462, 220 P.2d 493 (1950).

S.D.—State v. Smith, 88 S.D. 76, 216 N.W.2d 149 (1974).

20 Fla.—Liquor Store v. Continental Distilling Corp., 40 So. 2d 371 (Fla. 1949).

Ill.—Union Cemetery Ass'n of City of Lincoln v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

Ind.—State v. Griffin, 226 Ind. 279, 79 N.E.2d 537 (1948).

Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).

21 Ark.—Rowe v. Housing Authority of City of Little Rock, 220 Ark. 698, 249 S.W.2d 551 (1952).

Conn.—Barnes v. City of New Haven, 140 Conn. 8, 98 A.2d 523 (1953).

Ill.—Interstate Bond Co. v. Baran, 406 Ill. 161, 92 N.E.2d 658 (1950).

Ind.—Hanley v. State, 234 Ind. 326, 123 N.E.2d 452 (1954).

Or.—Barnard Motors v. City of Portland, 188 Or. 340, 215 P.2d 667 (1950).

Va.—Cavalier Vending Corp. v. State Bd. of Pharmacy, 195 Va. 626, 79 S.E.2d 636 (1954).

22 Cal.—Pacific Coast Dairy v. Police Court of City and County of San Francisco, 214 Cal. 668, 8 P.2d 140, 80 A.L.R. 1217 (1932).

Conn.—Lyman v. Adorno, 133 Conn. 511, 52 A.2d 702 (1947).

Iowa—Plank v. Grimes, 238 Iowa 594, 28 N.W.2d 34 (1947).

Ky.—Department of Revenue ex rel. Allphin v. Turner, 260 S.W.2d 658 (Ky. 1953).

Pa.—Harr v. Boucher, 142 Pa. Super. 114, 15 A.2d 699 (1940).

Tenn.—Southern Ry. Co. v. Sanders, 193 Tenn. 409, 246 S.W.2d 65 (1952).

23 S.D.—State v. Smith, 88 S.D. 76, 216 N.W.2d 149 (1974).
Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).

24 Conn.—Lyman v. Adorno, 133 Conn. 511, 52 A.2d 702 (1947).
Ind.—Edwards v. Housing Authority of City of Muncie, 215 Ind. 330, 19 N.E.2d 741 (1939).
Mass.—Allydonn Realty Corp. v. Holyoke Housing Authority, 304 Mass. 288, 23 N.E.2d 665 (1939).

25 Ind.—Hawkins v. City of Greenfield, 248 Ind. 593, 230 N.E.2d 396 (1967).

26 Conn.—Lyman v. Adorno, 133 Conn. 511, 52 A.2d 702 (1947).

27 Conn.—Warner v. Gabb, 139 Conn. 310, 93 A.2d 487 (1952).

28 Conn.—Carilli v. Pension Commission of City of Hartford, 154 Conn. 1, 220 A.2d 439 (1966).

29 Tenn.—Wilson v. Beeler, 193 Tenn. 213, 245 S.W.2d 620 (1951).

30 N.D.—State v. Knoefler, 279 N.W.2d 658 (N.D. 1979).

31 Or.—Alsos v. Kendall, 111 Or. 359, 227 P. 286 (1924).
Wash.—State v. Hirabayashi, 133 Wash. 462, 233 P. 948 (1925), opinion adhered to on reh'g, 139 Wash. 696, 246 P. 577 (1926) and aff'd, 277 U.S. 572, 48 S. Ct. 435, 72 L. Ed. 994 (1928).

32 Ill.—People v. Dunn, 255 Ill. 289, 99 N.E. 577 (1912).

33 Tex.—Cole v. Browning, 187 S.W.2d 588 (Tex. Civ. App. Fort Worth 1945), writ refused w.o.m.

34 Ky.—Miller v. Robertson, 306 Ky. 653, 208 S.W.2d 977 (1948).

35 Ky.—Miller v. Robertson, 306 Ky. 653, 208 S.W.2d 977 (1948).

36 Ill.—Rosehill Cemetery Co. v. City of Chicago, 352 Ill. 11, 185 N.E. 170, 87 A.L.R. 742 (1933).

37 Kan.—Vaughn v. Nadel, 228 Kan. 469, 618 P.2d 778 (1980).
Tex.—Burroughs v. Lyles, 142 Tex. 704, 181 S.W.2d 570 (1944).

End of Document

16B C.J.S. Constitutional Law § 1209

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

1. In General

§ 1209. Offices and officers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2860, 2861, 2863 to 2868, 2870 to 2878, 2880 to 2885, 2887 to 2890, 2892 to 2894, 2896 to 2907

Ordinarily, where not forbidden by some special constitutional provision, the legislature may act with respect to offices and officers without violating the constitutional provision prohibiting the grant of special privileges or immunities.

The legislature may, where not forbidden by some special constitutional provision, without violating the constitutional provision prohibiting the grant of special privileges or immunities, create offices,[1] prescribe the duties and emoluments thereof,[2] and prescribe the terms and conditions of employment.[3] The legislature, without violating such constitutional provision, may prescribe in general terms the qualifications required of persons elected or appointed to public office or employment[4] and the conditions on which they may be discharged or retired.[5]

The constitutional prohibition against the grant of exclusive separate public emoluments or privileges does not require that officers or employees be denied pay for absence from work because of illness or vacation.[6] The fact that the personnel of a state

commission includes a member designated by persons who may benefit from the action of the commission does not constitute the granting of any special privilege.[7]

Statutory provisions granting a preferential right to veterans to appointment to public office are constitutional,[8] provided they have qualified for the appointment under uniform eligibility rules.[9] Additionally, statutory provisions governing the establishment of eligible lists for civil service applicants which give disabled veterans a preference superior to that of other veterans do not violate constitutional provisions.[10]

On the other hand, a statute which confers special privileges or immunities on some officers violates the constitutional prohibitions and is void.[11] A civil service statute which exempts veterans from the necessity of taking a competitive examination has been held unconstitutional.[12] Statutes are unconstitutional if they permit veterans to qualify under less rigorous standards than those prescribed for other applicants,[13] and a statute which gives undue weight to military and public experience of veterans has also been held unconstitutional.[14]

Preferential treatment that is based on reasonable class distinctions among government employees do not violate the Privileges and Immunities Clause.[15]

Conferring power of appointment.

Statutes have been sustained which have given the right to associations or societies of persons belonging to a particular profession to appoint the members of the state board of examiners for the profession.[16] The same is true of a statute providing that members of the bar shall nominate persons from whom the court shall select jury commissioners,[17] of a statute providing that jury commissioners in certain counties shall be appointed by judges of the superior courts,[18] and of a statute authorizing the president of the county board to appoint the civil service commission,[19] as well as of a statute authorizing the nomination of members of a municipal plans commission by various associations, clubs, and corporations of a public character.[20] However, a statute authorizing unincorporated associations organized for the promotion of private business to appoint a state board with power to license and to exercise control over persons engaged in that particular line of business has been held void.[21]

Footnotes

1 Ind.—Benton County Council of Benton County v. State ex rel. Sparks, 224 Ind. 114, 65 N.E.2d 116 (1946).
Wash.—State v. Derbyshire, 79 Wash. 227, 140 P. 540 (1914).

2 Ind.—Benton County Council of Benton County v. State ex rel. Sparks, 224 Ind. 114, 65 N.E.2d 116 (1946).

3 Tenn.—City of Knoxville v. State ex rel. Hayward, 175 Tenn. 159, 133 S.W.2d 465 (1939).

4 Cal.—Cook v. Mason, 103 Cal. App. 6, 283 P. 891 (3d Dist. 1929).
Ind.—State ex rel. Buttz v. Marion Circuit Court, 225 Ind. 7, 72 N.E.2d 225, 170 A.L.R. 187 (1947).
Ky.—Department of Revenue ex rel. Allphin v. Turner, 260 S.W.2d 658 (Ky. 1953).

5 Mass.—Goodale v. County Commissioners for Worcester, 277 Mass. 144, 178 N.E. 228 (1931).

6 Ky.—Miller v. Robertson, 306 Ky. 653, 208 S.W.2d 977 (1948).
Pa.—Iben v. Borough of Monaca, 158 Pa. Super. 46, 43 A.2d 425 (1945).

7 Pa.—In re Glen Alden Coal Co., 350 Pa. 177, 38 A.2d 37 (1944).

8 Cal.—Cook v. Mason, 103 Cal. App. 6, 283 P. 891 (3d Dist. 1929).
Minn.—State v. Empie, 164 Minn. 14, 204 N.W. 572 (1925).
Wash.—State v. City of Seattle, 134 Wash. 360, 235 P. 968 (1925).

9 Pa.—Carney v. Lowe, 336 Pa. 289, 9 A.2d 418 (1939).

10 Mass.—Smith v. Director of Civil Service, 324 Mass. 455, 87 N.E.2d 196 (1949).

11 Pa.—Francis v. Neville Tp., 372 Pa. 77, 92 A.2d 892 (1952).
Tenn.—Somerville v. McCormick, 182 Tenn. 489, 187 S.W.2d 785 (1945).

12 Pa.—Wood v. City of Philadelphia, 17 Pa. Dist. 1022, 1908 WL 3484 (Pa. C.P. 1908), aff'd, 46 Pa. Super. 573, 1911 WL 4523 (1911).

13 Pa.—Carney v. Lowe, 336 Pa. 289, 9 A.2d 418 (1939).

14 Pa.—Com. ex rel. Graham, to Use of Markham v. Schmid, 333 Pa. 568, 3 A.2d 701, 120 A.L.R. 777 (1938).

15 Ind.—Cornell v. Hamilton, 791 N.E.2d 214 (Ind. Ct. App. 2003).

16 Ala.—McCrory v. Wood, 277 Ala. 426, 171 So. 2d 241 (1965).
Cal.—Ex parte Gerino, 143 Cal. 412, 77 P. 166 (1904).

17 Ala.—McCrory v. Wood, 277 Ala. 426, 171 So. 2d 241 (1965).
Wash.—State v. Vance, 29 Wash. 435, 70 P. 34 (1902).

18 Ala.—McCrory v. Wood, 277 Ala. 426, 171 So. 2d 241 (1965).
Cal.—Martin v. Superior Court of Sacramento County, 194 Cal. 93, 227 P. 762 (1924).

19 Ala.—McCrory v. Wood, 277 Ala. 426, 171 So. 2d 241 (1965).
Ill.—Morrison v. People, 196 Ill. 454, 63 N.E. 989 (1902).

20 Ala.—McCrory v. Wood, 277 Ala. 426, 171 So. 2d 241 (1965).
Wash.—Bussell v. Gill, 58 Wash. 468, 108 P. 1080 (1910).

21 Ill.—Lasher v. People, 183 Ill. 226, 55 N.E. 663 (1899).

End of Document

16B C.J.S. Constitutional Law § 1210

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

1. In General

§ 1210. Municipal corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2864, 2871, 2880, 2882, 2888, 2892, 2894, 2898, 2940

A municipal corporation is not a "citizen" within the meaning of constitutional provisions prohibiting the legislature from granting to any "citizen" special privileges or immunities.

A municipal corporation, as a governmental agency,[1] is not a "citizen" within the meaning of constitutional provisions prohibiting the legislature from granting to any "citizen" special privileges or immunities.[2] A municipal corporation, created by the state for better ordering of government, has no constitutional privileges or immunities which they may invoke in opposition to the will of its creator.[3] Constitutional provisions forbidding the grant of special privileges or immunities have been construed as not applicable to municipal corporations or agencies of the state[4] and, hence, as not forbidding the grant to municipal corporations of privileges or immunities not given to individuals or to private corporations.[5] Municipal corporations are expressly exempted by some constitutions from the operation of such provisions.[6]

Constitutional prohibitions of special privileges do not forbid the enactment of general laws applicable only to municipal corporations of a particular class[7] or even the grant of a particular power of a public nature to a particular municipal corporation.[8]

However, a statute or charter which exempts a municipal corporation from a liability imposed by a general rule of law to which other such corporations remain subject is unconstitutional.[9] Also, if the appropriation of state revenues to a county confers a special benefit on such county from which other like counties are excluded, a constitutional violation has occurred.[10]

A law may constitutionally provide that all transitory actions against municipal corporations of a certain class shall be brought in the counties in which such corporations are situated.[11] While a statute constitutionally may prescribe a shorter period of limitations for actions against cities than for actions against individuals,[12] it is impermissible to impose a different time limitation on the commencement of tort actions against counties than is imposed on the commencement of tort actions against other state entities.[13] However, it validly may be made a condition precedent to recovery against a city for injuries that notice of the same be given the city within a certain number of days.[14]

A statute making different provisions as to the number and salaries of deputy county officers in counties of different classes has been held invalid.[15] Similarly, the cost of constructing state highways through several counties cannot constitutionally be imposed on all the counties save one specially exempted.[16] The same is true of a statute purporting to limit the power of an irrigation district to purchase "any of its bonds not then due,"[17] and of a statute providing alternative forms of government, which is intended to be of universal application but is not.[18] A constitutional prohibition against the grant of privileges or immunities which shall not equally belong to all citizens, although evidently enacted to restrict the legislative assembly, also operates as a limitation on the council of a municipality.[19]

Footnotes

1 Minn.—Town of Bridgie v. County of Koochiching, 227 Minn. 320, 35 N.W.2d 537 (1948).
Mo.—State ex rel. Jones v. Nolte, 350 Mo. 271, 165 S.W.2d 632 (1942).
Wash.—Outlook Irr. Dist. v. Fels, 176 Wash. 211, 28 P.2d 996 (1934).

2 Ark.—Deaderick v. Parker, 211 Ark. 394, 200 S.W.2d 787 (1947).
Ind.—Board of Com'rs of Howard County v. Kokomo City Plan Commission, 263 Ind. 282, 330 N.E.2d 92 (1975); Town of Chandler v. Indiana-American Water Co., 892 N.E.2d 1264 (Ind. Ct. App. 2008).

3 Cal.—Board of Administration v. Wilson, 57 Cal. App. 4th 967, 67 Cal. Rptr. 2d 477 (3d Dist. 1997).
Colo.—City of Colorado Springs v. Board of County Com'rs of County of Eagle, 895 P.2d 1105 (Colo. App. 1994).
Mich.—Oakland County Bd. of Road Com'rs v. Michigan Property & Cas. Guar. Ass'n, 217 Mich. App. 154, 550 N.W.2d 856 (1996), decision aff'd, 456 Mich. 590, 575 N.W.2d 751 (1998).

4 Ill.—People ex rel. Gutknecht v. Chicago Regional Port Dist., 4 Ill. 2d 363, 123 N.E.2d 92 (1954).
Tenn.—Whedbee v. Godsey, 190 Tenn. 140, 228 S.W.2d 91 (1950).

5 Ark.—Deaderick v. Parker, 211 Ark. 394, 200 S.W.2d 787 (1947).
Ill.—People ex rel. Gutknecht v. Chicago Regional Port Dist., 4 Ill. 2d 363, 123 N.E.2d 92 (1954).
Or.—State ex rel. Luckey v. James, 189 Or. 268, 219 P.2d 756 (1950).

6 Wash.—State ex rel. Northwestern Elec. Co. v. Superior Court In and For Clark County, 28 Wash. 2d 476, 183 P.2d 802, 173 A.L.R. 1351 (1947).

7 Ga.—Thompson v. Municipal Elec. Authority of Georgia, 238 Ga. 19, 231 S.E.2d 720 (1976).
Ill.—Town of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5th Dist. 1975).
Ind.—City of Lawrence v. City of Indianapolis, 167 Ind. App. 279, 338 N.E.2d 683 (1975).

8 Ind.—State v. Swanson, 182 Ind. 582, 107 N.E. 275 (1914).
Tenn.—KnoxTenn Theatres v. Dance, 186 Tenn. 114, 208 S.W.2d 536 (1948).

9 Ind.—Hayes v. Taxpayers Research Ass'n, 225 Ind. 242, 72 N.E.2d 658 (1947).
Tenn.—Furnace v. City of Dayton, 197 Tenn. 477, 274 S.W.2d 6 (1954).

10 Tenn.—Hill v. Snodgrass, 167 Tenn. 285, 68 S.W.2d 943 (1934).

11 N.Y.—Czamowsky v. City of Rochester, 55 A.D. 388, 66 N.Y.S. 931 (4th Dep't 1900), aff'd, 165 N.Y. 649, 59 N.E. 1121 (1901).

12 U.S.—Madden v. Lancaster County, 65 F. 188 (C.C.A. 8th Cir. 1894).

13 Wash.—Jenkins v. State, 85 Wash. 2d 883, 540 P.2d 1363 (1975).

14 Ind.—Sherfey v. City of Brazil, 213 Ind. 493, 13 N.E.2d 568 (1938).
Va.—Bowles v. City of Richmond, 147 Va. 720, 129 S.E. 489 (1925), on reh'g, 147 Va. 720, 133 S.E. 593 (1926).

15 Tenn.—Weaver v. Davidson County, 104 Tenn. 315, 59 S.W. 1105 (1900).

16 Tenn.—Berry v. Hayes, 160 Tenn. 577, 28 S.W.2d 50 (1930).

17 Cal.—Provident Land Corp. v. Zumwalt, 12 Cal. 2d 365, 85 P.2d 116 (1938).

18 Ind.—Keane v. Remy, 201 Ind. 286, 168 N.E. 10 (1929).

19 Or.—Ideal Tea Co. v. City of Salem, 77 Or. 182, 150 P. 852 (1915).

End of Document

16B C.J.S. Constitutional Law § 1211

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

1. In General

§ 1211. Private corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2863, 2870, 2871, 2888, 2898

The constitutional prohibition against the granting of special privileges and immunities applies to private corporations. A private corporation is not a "citizen" within the meaning of constitutional provisions prohibiting the legislature from granting to any "citizen" special privileges or immunities.

The constitutional prohibition against the granting of special privileges and immunities applies to private corporations.[1] A private corporation is not a "citizen" within the meaning of constitutional provisions prohibiting the legislature from granting to any "citizen" special privileges or immunities.[2] The charter of a private corporation and all the powers conferred on the corporation as such are in the nature of special privileges not possessed by individuals, and it is within the police power of the legislature to grant a large measure of powers to corporations without infringing constitutional provisions forbidding the grant of special privileges to some persons that are not open to others.[3]

A provision which prohibits the granting of exclusive privileges, except as otherwise provided, to a corporation is not construed to prohibit the award of exclusive franchises, licenses, or other forms of exclusive agencies.[4] Such a provision has been construed narrowly to limit only the powers and rights that may be given to a corporation through its charter.[5] A statute is void which

extends the period of corporate existence of a corporation created by special law beyond that prescribed by the general laws of the state[6] or otherwise attempts to confer on a particular corporation special privileges not open to other corporations of similar character.[7]

Constitutional prohibitions of the grant of special privileges do not forbid the grant to corporations or to a particular corporation of the right of eminent domain for a public purpose.[8]

In order that a grant of special privileges or immunities to a private corporation may be valid, it must be made in consideration of public service.[9]

Footnotes

1 Ill.—Schreiber v. Cook County, 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944).
Iowa—Moorman Mfg. Co. v. Bair, 254 N.W.2d 737 (Iowa 1977), judgment aff'd, 437 U.S. 267, 98 S. Ct. 2340, 57 L. Ed. 2d 197 (1978).

2 Cal.—City and County of San Francisco v. Flying Dutchman Park, Inc., 122 Cal. App. 4th 74, 18 Cal. Rptr. 3d 532 (1st Dist. 2004).
Or.—State ex rel. Luckey v. James, 189 Or. 268, 219 P.2d 756 (1950).

3 Ill.—Gadlin v. Auditor of Public Accounts, 414 Ill. 89, 110 N.E.2d 234 (1953).
Mo.—Swisher Inv. Co. v. Brimson Drainage Dist. of Grundy and Harrison Counties, 362 Mo. 869, 245 S.W.2d 75 (1952).
Mont.—State ex rel. Normile v. Cooney, 100 Mont. 391, 47 P.2d 637 (1935).

4 U.S.—Iowa Independent Bankers v. Board of Governors of Federal Reserve System, 511 F.2d 1288 (D.C. Cir. 1975); Westinghouse Elec. & Mfg. Co. v. Denver Tramway Co., 3 F.2d 285 (D. Colo. 1924).

5 U.S.—Iowa Independent Bankers v. Board of Governors of Federal Reserve System, 511 F.2d 1288 (D.C. Cir. 1975).

6 Ind.—Bank of Commerce v. Wiltsie (State Report Title: Application of Bank of Commerce for Change of Name), 153 Ind. 460, 53 N.E. 950 (1899).

7 N.C.—State ex rel. Summrell v. Carolina-Virginia Racing Ass'n, 239 N.C. 591, 80 S.E.2d 638 (1954).
Va.—McClintock v. Richlands Brick Corp., 152 Va. 1, 145 S.E. 425, 61 A.L.R. 1033 (1928).
Wash.—Power, Inc. v. Huntley, 39 Wash. 2d 191, 235 P.2d 173 (1951).

8 Ind.—Russell v. Trustees of Purdue University, 201 Ind. 367, 168 N.E. 529, 65 A.L.R. 1384 (1929).
La.—Louisiana Power & Light Co. v. Mosley, 18 So. 2d 210 (La. Ct. App. 2d Cir. 1944).

9 N.C.—State v. Felton, 239 N.C. 575, 80 S.E.2d 625 (1954).
Public services, generally see, § 1208.

16B C.J.S. Constitutional Law § 1212

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

1. In General

§ 1212. Creation of preferences

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2880, 2899

Under the constitutional privileges and immunities analysis, preferential treatment afforded by a statute must be uniformly applicable to all persons similarly situated.

The Privileges and Immunities Clause prohibits classification between individuals that are upon the same terms but does not prohibit a legislature from making classifications based upon differences in the terms surrounding individuals; therefore, there may be disparate treatment between different classes of individuals, subject to express constitutional classifications, but there can be no discrimination between members of one class.[1] Under the constitutional privileges and immunities analysis, preferential treatment afforded by a statute must be uniformly applicable to all persons similarly situated.[2]

A legislative classification favoring veteran applicants is reasonable, and does not violate privileges and immunities guaranties, if its enforcement is limited to situations where the veteran possesses qualifications substantially equal to those of nonveteran applicants as revealed by a full and fair examination and interview process.[3] Similarly, there is a rational basis for statutes which provided different treatment for classes of debtors with respect to wage exemptions in garnishment proceedings because they

serve a legitimate government purpose of balancing the treatment of creditors and debtors and not allowing debtors to fully escape debts justly created by contract.[4]

Preferences given by laws of a general nature to certain classes of creditors have been sustained as not granting special privileges in violation of constitutional provisions.[5] Judgment creditors may be given a preference in the matter of redemption from a judicial sale.[6]

On the other hand, a statute giving a preference against other creditors to manual or mechanical laborers for the full amount due has been declared unconstitutional.[7] The same is true of a statute giving a preference to one holder of irrigation district bonds over another holder.[8]

Footnotes

1 S.D.—Accounts Management, Inc. v. Williams, 484 N.W.2d 297 (S.D. 1992).

2 Ind.—Shepler v. State, 758 N.E.2d 966 (Ind. Ct. App. 2001).

3 Wash.—Gossage v. State, 112 Wash. App. 412, 49 P.3d 927 (Div. 2 2002).

4 S.D.—Accounts Management, Inc. v. Williams, 484 N.W.2d 297 (S.D. 1992).

5 S.C.—Witt v. People's State Bank of South Carolina, 166 S.C. 1, 164 S.E. 306, 83 A.L.R. 1068 (1932).
Wash.—Fitch v. Applegate, 24 Wash. 25, 64 P. 147 (1901).
Wyo.—In re Riverton State Bank, 48 Wyo. 372, 49 P.2d 637 (1935).

6 Colo.—Paddack v. Staley, 24 Colo. 188, 49 P. 281 (1897).
Ill.—Meier v. Hilton, 257 Ill. 174, 100 N.E. 520 (1912).

7 Ind.—McErlain v. Taylor, 207 Ind. 240, 192 N.E. 260, 94 A.L.R. 1284 (1934).

8 Cal.—Provident Land Corp. v. Zumwalt, 12 Cal. 2d 365, 85 P.2d 116 (1938).

16B C.J.S. Constitutional Law § 1213

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

2. Exemptions from Operation of Law

§ 1213. Basic exemptions from operation of law

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2877, 2883 to 2886, 2893, 2894, 2899

Provided the exemption is made applicable to all persons of the same class and similarly situated, statutes granting certain exemptions from the operation of general laws are not invalid as granting special privileges or immunities.

An exemption from a regulation is an immunity to which the constitutional guarantee of equal privileges and immunities applies.[1] The legislature, in the exercise of its police power for the promotion of the public welfare, may grant certain exemptions from the operation of general laws where such exemptions are made applicable to all persons of the same class and similarly situated.[2]

Such exemptions, however, must apply to all alike who are of the classes and in the situation included.[3] Thus, if the statute or ordinance granting the exemption has the effect of conferring on certain persons privileges or immunities not granted to other persons similarly situated or not performing similar public services, it is unconstitutional.[4] Nevertheless, where the classification is reasonable and the challenging party is not similarly situated, the statutory classification is constitutional.[5] Statutes have been

sustained which have granted exemptions from various forms of public service,[6] and an exemption of certain property from seizure and sale under legal process for the payment of debts.[7]

CUMULATIVE SUPPLEMENT

Cases:

Exception for satellite facilities, specifically off track betting facility, under city's no-smoking ordinance violated equal privileges and immunities clause of the Indiana Constitution because the disparate treatment was not reasonably related to the inherent differences between the divergently treated classes; ordinance did not provide any information or inferences as to why off track betting facility would be different than a bar or restaurant. West's A.I.C. Const. Art. 1, § 23. Whistle Stop Inn, Inc. v. City of Indianapolis, 36 N.E.3d 1118 (Ind. Ct. App. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Or.—Northwest Advancement, Inc. v. State, Bureau of Labor, Wage and Hour Div., 96 Or. App. 133, 772 P.2d 934 (1989).

2 U.S.—Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013).
Cal.—Paul v. Eggman, 244 Cal. App. 2d 461, 53 Cal. Rptr. 237 (5th Dist. 1966).
Ky.—Rosenberg v. Queenan, 261 S.W.2d 617 (Ky. 1953).
Minn.—Wichelman v. Messner, 250 Minn. 88, 83 N.W.2d 800, 71 A.L.R.2d 816 (1957).
Tenn.—Whedbee v. Godsey, 190 Tenn. 140, 228 S.W.2d 91 (1950).
Wash.—State v. Sears, 4 Wash. 2d 200, 103 P.2d 337 (1940).

3 Cal.—Hay v. Superior Court in and for Los Angeles County, 61 Cal. App. 667, 215 P. 717 (2d Dist. 1923).
Neb.—Bordy v. State, 142 Neb. 714, 7 N.W.2d 632 (1943).
N.M.—State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943).
Wash.—Verino v. Hickey, 135 Wash. 71, 237 P. 5 (1925).

4 Conn.—Chotkowski v. State, 213 Conn. 13, 566 A.2d 419 (1989).
Ind.—Horn v. Hendrickson, 824 N.E.2d 690 (Ind. Ct. App. 2005).
Neb.—Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).
Okla.—State v. Lynch, 1990 OK 82, 796 P.2d 1150 (Okla. 1990).
Or.—Newport Church of Nazarene v. Hensley, 335 Or. 1, 56 P.3d 386 (2002).

5 Ind.—Collins v. Day, 644 N.E.2d 72 (Ind. 1994); Hawkins v. State, 973 N.E.2d 619 (Ind. Ct. App. 2012).
Iowa—Perkins v. Board of Supervisors of Madison County, 636 N.W.2d 58 (Iowa 2001).
Or.—Southern Wasco County Ambulance Service, Inc. v. State By and Through Howland, 156 Or. App. 543, 968 P.2d 848 (1998).

6 N.C.—State v. Knight, 269 N.C. 100, 152 S.E.2d 179 (1967).

7 Or.—Watson v. Hurlburt, 87 Or. 297, 170 P. 541 (1918).

16B C.J.S. Constitutional Law § 1214

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

2. Exemptions from Operation of Law

§ 1214. Municipal corporations and public officers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2877, 2883 to 2886, 2893, 2894, 2899

Municipal corporations and public officers may be exempted from the operation of statutes governing the public generally.

Since the prohibition of the grant of special privileges does not apply to municipal corporations,[1] they may be exempted from the operation of statutes governing the public generally.[2]

Statutory provisions exempting public officers from the necessity of taking further examinations in order to succeed themselves are not violative of constitutional provisions.[3]

Footnotes

1 § 1210.

2 Ill.—Rapacz v. Township High School Dist. No. 207, 2 Ill. App. 3d 1095, 278 N.E.2d 540 (1st Dist. 1971).

Tenn.—Whedbee v. Godsey, 190 Tenn. 140, 228 S.W.2d 91 (1950).

3 Ky.—Department of Revenue ex rel. Allphin v. Turner, 260 S.W.2d 658 (Ky. 1953).

End of Document

16B C.J.S. Constitutional Law § 1215

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

2. Exemptions from Operation of Law

§ 1215. Private corporations and associations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2877, 2883 to 2886, 2893, 2894, 2899

The legislature may, as a general rule, grant to private corporations certain exemptions from the operation of general laws.

A legislature may grant certain exemptions to private corporations which operate as grants of special powers or privileges not accorded by law to individuals,[1] especially where the State has a rational basis,[2] or a substantial interest,[3] in granting the exception. Thus, statutes have been sustained which have granted exemption of certain corporations from suit except in the county where the cause of action arises,[4] exemptions of corporate officers from personal liability,[5] and exemption of surety corporations from making an affidavit of fitness to be a sole surety on a bond.[6] Additionally, fraternal beneficiary associations may be exempted by statute from the operation of general insurance laws.[7]

On the other hand, a statute is void which attempts to grant to certain corporations immunity from liability for torts,[8] unless notice of the injuries is given within a certain time after they are sustained,[9] or has exempted corporations which possess certain old charters from regulations imposed by law on corporations in general,[10] or has granted a franchise to a corporation for a

longer term than allowed by general law.[11] A statute which declares void certain exculpatory clauses in leases, except business leases in which, inter alia, a corporation regulated by a federal or state agency is the lessor, is invalid as a grant of immunity to such corporation.[12]

CUMULATIVE SUPPLEMENT

Cases:

Dairy farmers' privilege or immunity from paying otherwise mandatory overtime pay, due to exclusion of agricultural workers from the definition of employee in Minimum Wage Act, a statute fulfilling legislature's constitutional duty to protect the health and safety of employees, was not reasonable, and thus agricultural exemption violated state constitutional privileges or immunities clause as applied to dairy workers; while milking may slow in summer months, it occurred year-round in a factory-like setting, unlike that of piece-rate seasonal workers. Wash. Const. art. 1, § 12, art. 2, § 35; Wash. Rev. Code Ann. §§ 49.46.130(1), 49.46.130(2)(g). Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 475 P.3d 164 (Wash. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Iowa—Perkins v. Board of Supervisors of Madison County, 636 N.W.2d 58 (Iowa 2001).
Kan.—Sharples v. Roberts, 249 Kan. 286, 816 P.2d 390 (1991).
Or.—Southern Wasco County Ambulance Service, Inc. v. State By and Through Howland, 156 Or. App. 543, 968 P.2d 848 (1998).
Wash.—Griffin v. Eller, 130 Wash. 2d 58, 922 P.2d 788 (1996).
Health care provider
A statute protecting a qualified health care provider under a health care stabilization fund from vicarious liability for acts of a health care provider qualified for coverage under the fund does not violate the constitutional prohibition against special privileges or immunities by the legislature.
Kan.—Sharples v. Roberts, 249 Kan. 286, 816 P.2d 390 (1991).

2 Or.—Southern Wasco County Ambulance Service, Inc. v. State By and Through Howland, 156 Or. App. 543, 968 P.2d 848 (1998).

3 Wash.—Griffin v. Eller, 130 Wash. 2d 58, 922 P.2d 788 (1996).

4 Ga.—Central Georgia Power Co. v. Stubbs, 141 Ga. 172, 80 S.E. 636 (1913).

5 N.H.—Niagara Bridge Works v. Jose, 59 N.H. 81, 1879 WL 4149 (1879).

6 Mont.—King v. Pony Gold-Min. Co., 24 Mont. 470, 62 P. 783 (1900).

7 Mo.—Claudy v. Royal League, 259 Mo. 92, 168 S.W. 593 (1914).

8 N.C.—Motley v. Southern Finishing & Warehouse Co., 122 N.C. 347, 30 S.E. 3 (1898).

9 Me.—Milton v. Bangor Ry. & Electric Co., 103 Me. 218, 68 A. 826 (1907).

10 Ind.—Bank of Commerce v. Wiltsie (State Report Title: Application of Bank of Commerce for Change of Name), 153 Ind. 460, 53 N.E. 950 (1899).

11 Nev.—State v. Dayton & V. Toll-Road Co., 10 Nev. 155, 1875 WL 4022 (1875).

12 Ill.—Sweney Gasoline & Oil Co. v. Toledo, P. & W. R. Co., 42 Ill. 2d 265, 247 N.E.2d 603 (1969).

16B C.J.S. Constitutional Law § 1216

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

2. Exemptions from Operation of Law

§ 1216. Tax or license laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2877, 2883 to 2886, 2893, 2894, 2899

Statutory exemptions from tax or license laws are valid if they operate uniformly as to all persons or property of the same class or if a public interest is involved.

Statutes containing exemptions from taxation do not grant special privileges or immunities in contravention of state constitutions where the statute operates uniformly as to all persons or property of the same class, or a public interest is involved.[1] A state may exempt from taxation the property of charitable[2] or educational[3] institutions, or property of war veterans,[4] or may exempt domestic insurance corporations from ad valorem taxes.[5] However, where an exemption from taxation is not for a public purpose, it is peculiarly within a constitutional provision forbidding the grant of special privileges or immunities.[6] A statute is void which taxes cemetery lands owned by a corporation but exempts such lands owned by an individual.[7]

Laws exempting certain persons from a license or privilege tax are not invalid as granting special privileges or immunities where the exemptions have a reasonable basis or involve public interests.[8] However, where the effect of the exemption is to create unwarranted discriminations, by conferring a benefit on certain persons and corporations which is denied to others under

the same circumstances, the law is void.[9] Thus, a statute which exempts a humane society from the payment of dog licenses required of all other persons is void.[10] Statutes which exempt from the payment of license taxes honorably discharged soldiers and sailors,[11] or ex-soldiers not receiving a pension in excess a specified amount a month,[12] have been held invalid.

In challenging a statutory exemption from a tax or license law, the challenging party must show that it is similarly situated to the protected class.[13]

Footnotes

1 U.S.—Wells Fargo Bank & Union Trust Co. v. Imperial Irr. Dist., 136 F.2d 539 (C.C.A. 9th Cir. 1943).
Ala.—Frazier v. State Tax Commission, 234 Ala. 353, 175 So. 402, 110 A.L.R. 1479 (1937).
Ark.—Thompson v. Continental Southern Lines, 222 Ark. 108, 257 S.W.2d 375 (1953).
Conn.—Commissioner of Public Works v. City of Middletown, 53 Conn. App. 438, 731 A.2d 749 (1999).
Ind.—Taxpayers Lobby of Indiana, Inc. v. Orr, 262 Ind. 92, 311 N.E.2d 814 (1974).

2 Ohio—Humphreys v. State, 70 Ohio St. 67, 70 N.E. 957 (1904).
Or.—Corporation of Sisters of Mercy v. Lane County, 123 Or. 144, 261 P. 694 (1927).

3 U.S.—Northwestern University v. People ex rel. Miller, 99 U.S. 309, 25 L. Ed. 387, 1878 WL 18271 (1878).

4 Wyo.—Harkin v. Board of Com'rs of Niobrara County, 30 Wyo. 455, 222 P. 35 (1924).
Mass.—Sylvester v. Commissioner Of Revenue, 445 Mass. 304, 837 N.E.2d 662 (2005).

5 Miss.—Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

6 Ky.—Purcell v. City of Lexington, 186 Ky. 381, 216 S.W. 599 (1919).

7 Kan.—Mt. Hope Cemetery Co. v. Pleasant, 139 Kan. 417, 32 P.2d 500 (1934).

8 Ill.—Youngquist v. City of Chicago, 405 Ill. 21, 90 N.E.2d 205 (1950).
S.C.—State ex rel. Roddey v. Byrnes, 219 S.C. 485, 66 S.E.2d 33 (1951).

9 Ariz.—Gila Meat Co. v. State, 35 Ariz. 194, 276 P. 1 (1929).
Cal.—People v. Richfield Oil Co., 204 Cal. 699, 268 P. 355 (1928).

10 N.Y.—Fox v. Mohawk & H.R. Humane Soc., 165 N.Y. 517, 59 N.E. 353 (1901).

11 Ill.—Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394, 83 A.L.R. 1222 (1932).
Ind.—Hanley v. State, 234 Ind. 326, 123 N.E.2d 452 (1954).
Wash.—Larson v. City of Shelton, 37 Wash. 2d 481, 224 P.2d 1067 (1950).

12 Ark.—Edelmann v. City of Fort Smith, 194 Ark. 100, 105 S.W.2d 528 (1937).

13 Ind.—Indianapolis Osteopathic Hosp., Inc. v. Department of Local Government Finance, 818 N.E.2d 1009 (Ind. Tax Ct. 2004).

16B C.J.S. Constitutional Law § 1217

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

3. Constitutionality of Particular Grants by State

§ 1217. General grants by state

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2871, 2873 to 2876, 2878, 2880 to 2885, 2888, 2890, 2892 to 2894, 2896 to 2907

In various cases, decisions have been rendered as to whether particular statutes have infringed upon state constitutional provisions which forbid the grant of special privileges or immunities.

In various cases, the courts have ruled that statutes do not violate constitutional provisions which proscribe a grant of special privileges or immunities to corporations, associations, or individuals.[1] Statutes have been upheld with respect to alleged infringement of such constitutional provisions, including statutes regulating banks and banking,[2] education,[3] employers and employees,[4] and workers' compensation.[5] Similarly, statutes regulating energy conservation,[6] motor vehicles or operators thereof,[7] public housing,[8] planned industrial expansion,[9] and urban renewal[10] have been ruled valid as against a claimed infringement of the special privileges or immunities prohibition. The State, acting through the legislature or municipal council, may, for the promotion of the public interest, grant exclusive franchises to public utilities.[11]

On the other hand, various statutes have been held invalid because they are in violation of state constitutional provisions which forbid a grant of special privileges or immunities.[12] More particularly, laws have been held void which authorize a private concern to publish the official statutes and make such statutes evidence of the acts contained therein[13] or grant to governing authorities the power to regulate the number of stories and size of buildings.[14]

Similarly, other laws have been held invalid because they violate the special privileges and immunities prohibition of the state constitution, such as laws which require the filing of a claim against the estate of a patient in a state insane hospital for unpaid support,[15] provide that contracts establishing a minimum resale price shall be valid,[16] prohibit the buying and selling of nontransferable transportation passes,[17] deny liability in some cases for injuries sustained on a state highway while it is under construction,[18] or grant an exclusive right to the use of certain portions of the streets for advertising purposes.[19] A law imposing a license or privilege tax which does not operate equally on persons of the same class and similarly situated is invalid as granting special privileges.[20]

Taxation in general.

Tax laws which operate equally and uniformly on all persons of the same class in a particular taxing district do not violate the constitutional prohibition of the grant of special privileges.[21] However, a statute which operates unequally on persons of the same class and similarly situated is void as granting special privileges.[22]

Footnotes

1 Ariz.—Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 637 P.2d 1053 (1981).
Colo.—Enger v. Walker Field, Colorado Public Airport Authority, 181 Colo. 253, 508 P.2d 1245 (1973).
Or.—Key Title Co. v. Real Estate Division, 43 Or. App. 177, 602 P.2d 663 (1979).
Tex.—Jim Walter Homes, Inc. v. White, 617 S.W.2d 767 (Tex. Civ. App. Beaumont 1981).

2 U.S.—Iowa Independent Bankers v. Board of Governors of Federal Reserve System, 511 F.2d 1288 (D.C. Cir. 1975).

3 Or.—Cooper v. Oregon School Activities Ass'n, 52 Or. App. 425, 629 P.2d 386, 15 A.L.R.4th 869 (1981).

4 N.J.—Smith v. City of Newark, 136 N.J. Super. 107, 344 A.2d 782 (App. Div. 1975).
Or.—Myers v. Board of Directors of Tualatin Rural Fire Dist., 5 Or. App. 142, 483 P.2d 95 (1971).

5 N.D.—Dunn v. North Dakota Workmen's Compensation Bureau, 191 N.W.2d 181 (N.D. 1971).

6 Or.—Nicoll v. City of Eugene, 52 Or. App. 379, 628 P.2d 1213 (1981), on reconsideration, 53 Or. App. 528, 632 P.2d 502 (1981).

7 N.J.—State v. Ernst, 110 N.J. Super. 520, 266 A.2d 171 (County Ct. 1970).
Wash.—State v. Kent, 87 Wash. 2d 103, 549 P.2d 721 (1976).

8 Ind.—Steup v. Indiana Housing Finance Authority, 273 Ind. 72, 402 N.E.2d 1215 (1980).
Iowa—John R. Grubb, Inc. v. Iowa Housing Finance Authority, 255 N.W.2d 89 (Iowa 1977).
Pa.—Johnson v. Pennsylvania Housing Finance Agency, 453 Pa. 329, 309 A.2d 528 (1973).

9 Mo.—State ex rel. Atkinson v. Planned Indus. Expansion Authority of St. Louis, 517 S.W.2d 36, 98 A.L.R.3d 663 (Mo. 1975).

10 Iowa—Dilley v. City of Des Moines, 247 N.W.2d 187 (Iowa 1976); Richards v. City of Muscatine, 237 N.W.2d 48 (Iowa 1975).
Wash.—City of Seattle v. Loutsis Inv. Co., Inc., 16 Wash. App. 158, 554 P.2d 379 (Div. 1 1976).

11 U.S.—Nebraska Gas & Elec. Co. v. City of Stromsburg, Neb., 2 F.2d 518 (C.C.A. 8th Cir. 1924).
Ill.—People v. Chicago Transit Authority, 392 Ill. 77, 64 N.E.2d 4 (1945).
N.C.—Carolina Tennessee Power Co. v. Hiawassee River Power Co., 175 N.C. 668, 96 S.E. 99 (1918).

12 Cal.—Rees v. Layton, 6 Cal. App. 3d 815, 86 Cal. Rptr. 268 (2d Dist. 1970).

Neb.—State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).
N.D.—Hastings v. James River Aerie No. 2337-Fraternal Order of Eagles, 246 N.W.2d 747 (N.D. 1976).

13 Ill.—Callaghan & Co. v. Smith, 304 Ill. 532, 136 N.E. 748 (1922).

14 Ga.—Glynn County Com'rs v. Cate, 183 Ga. 111, 187 S.E. 636 (1936).

15 Ill.—Board of Administration of Ill. v. Miles, 278 Ill. 174, 115 N.E. 841 (1917).

16 Neb.—McGraw Elec. Co. v. Lewis & Smith Drug Co., 159 Neb. 703, 160 Neb. 319, 68 N.W.2d 608 (1955).

17 Ill.—Allardt v. People, 197 Ill. 501, 64 N.E. 533 (1902).

18 Ind.—Crawford v. Calumet Paving Co., 233 Ind. 127, 117 N.E.2d 368 (1954).

19 Ill.—People ex rel. Healy v. Clean Street Co., 225 Ill. 470, 80 N.E. 298 (1907).

20 Wash.—Lone Star Cement Corp. v. City of Seattle, 71 Wash. 2d 564, 429 P.2d 909 (1967).

21 Ohio—Voinovich v. Board of Park Commrs. of Cleveland Metropolitan Park Dist., 42 Ohio St. 2d 511, 71 Ohio Op. 2d 506, 330 N.E.2d 434 (1975).
Validity of tax exemption laws, see § 1216.

22 S.D.—Stavig v. Van Camp, 46 S.D. 302, 192 N.W. 760 (1923).

End of Document

16B C.J.S. Constitutional Law § 1218

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

3. Constitutionality of Particular Grants by State

§ 1218. Grants of civil remedies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2871, 2873 to 2876, 2878, 2880 to 2885, 2888, 2890, 2892 to 2894, 2896 to 2907

If applicable to all persons in like situations, laws relating to civil remedies do not violate the special privileges provisions of the state constitution.

The provisions of state constitutions which prohibit a grant of special privileges or immunities have been the basis of challenges to various state laws relating to civil remedies.[1] A statute which extinguishes all causes of action with the exception of negligence against blood banks and hospitals supplying whole blood and its components does not infringe upon the privileges and immunities prohibition.[2] A statute which places a limit on the amount recoverable in a medical malpractice action does not violate the privileges and immunities prohibition.[3]

Statutes which provide protection for minors concerning limitations of time within which to commence an action have been upheld as against a claim of infringement upon the privileges and immunities prohibition.[4] However, in some cases, limitations statutes have been viewed as, in effect, granting a special or exclusive immunity in violation of the constitutional prohibition.[5]

An act which grants to one party to an action the right to have the facts reviewed on appeal, but denies such right to the other party, has been declared unconstitutional.[6]

Footnotes

1 Colo.—O'Quinn v. Walt Disney Productions, Inc., 177 Colo. 190, 493 P.2d 344 (1972).
N.D.—Gourneau v. Smith, 207 N.W.2d 256 (N.D. 1973).
Neb.—State Securities Co. v. Norfolk Livestock Sales Co., 187 Neb. 446, 191 N.W.2d 614, 9 U.C.C. Rep. Serv. 1281 (1971).
Or.—Knight v. Reforestation Services, Inc., 56 Or. App. 865, 643 P.2d 880 (1982).

2 U.S.—Fruge's Heirs v. Blood Services, 506 F.2d 841, 16 U.C.C. Rep. Serv. 627 (5th Cir. 1975).

3 Va.—Etheridge v. Medical Center Hospitals, 237 Va. 87, 376 S.E.2d 525 (1989).

4 Or.—Shaw v. Zabel, 267 Or. 557, 517 P.2d 1187 (1974).
Wash.—Stephens v. Stephens, 85 Wash. 2d 290, 534 P.2d 571 (1975).

5 Ill.—Skinner v. Anderson, 38 Ill. 2d 455, 231 N.E.2d 588 (1967).

6 Ill.—Hackett v. Chicago City Ry. Co., 235 Ill. 116, 85 N.E. 320 (1908).

16B C.J.S. Constitutional Law § 1219

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

3. Constitutionality of Particular Grants by State

§ 1219. Grants involving crimes and criminal procedure

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2871, 2873 to 2876, 2878, 2880 to 2885, 2888, 2890, 2892 to 2894, 2896 to 2907

No special privileges in violation of constitutional prohibitions are granted by statutes providing that certain acts shall constitute crimes, and regulating the procedure in criminal prosecutions, where they apply equally to all persons similarly situated.

A criminal statute that is reasonably related to government objectives does not violate the Privileges and Immunities Clause.[1] Additionally, a statute making the commission of certain acts criminal does not grant special privileges in contravention of constitutional prohibitions where it applies alike to all persons of the same class, similarly situated.[2] However, where a statute does not apply equally, it violates the Privileges and Immunities Clause.[3]

In the context of a vagueness challenge to a criminal law under a constitutional privileges and immunities provision, the inquiry is whether the enactment at issue creates a serious danger of unequal application of the enactment.[4] A criminal statute that does not provide an adequate degree of certainty violates the Privileges and Immunities Clause.[5]

A statute is void where it allows persons prosecuted in certain counties for violation of a compulsory school law to pick the trial magistrate while such privilege is denied to persons prosecuted for the same offense in other counties.[6] Also, a statute authorizing an attorney in a criminal case to challenge the judge, without setting forth any grounds of disqualification, but denying such privilege to the district attorney, has been held void as granting special privileges.[7]

Footnotes

1 Ind.—Johnson v. State, 721 N.E.2d 327 (Ind. Ct. App. 1999).
Wash.—State v. Sher, 149 Wis. 2d 1, 437 N.W.2d 878 (1989).

2 Ind.—Shepler v. State, 758 N.E.2d 966 (Ind. Ct. App. 2001).
Or.—State ex rel. Huddleston v. Sawyer, 324 Or. 597, 932 P.2d 1145 (1997).
No fundamental right
Protection provided by a criminal statute of limitations, not found in the United States Constitution, and under the control of the state legislature, is not a "fundamental right" within the meaning of Privilege and Immunities Clause analysis of a statute's construction.
Wash.—State v. Sher, 149 Wis. 2d 1, 437 N.W.2d 878 (1989).

3 Or.—Van Daam v. Hegstrom, 88 Or. App. 40, 744 P.2d 269 (1987).

4 Or.—Delgado v. Souders, 334 Or. 122, 46 P.3d 729 (2002).

5 Or.—State v. Norris-Romine, 134 Or. App. 204, 894 P.2d 1221 (1995).

6 Tenn.—Ford v. State, 150 Tenn. 327, 263 S.W. 60 (1924).

7 Cal.—Austin v. Lambert, 11 Cal. 2d 73, 77 P.2d 849, 115 A.L.R. 849 (1938).

End of Document

16B C.J.S. Constitutional Law § 1220

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

3. Constitutionality of Particular Grants by State

§ 1220. Fish and game laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2871, 2873 to 2876, 2878, 2880 to 2885, 2888, 2890, 2892 to 2894, 2896 to 2907

The legislature, in pursuance of its police power to preserve the game and fish of the state as the common property of its citizens, may, without violating the constitutional provision prohibiting the grant of special privileges or immunities, enact statutes concerning fish and game.

In pursuance of its police power to preserve the game and fish of the state as the common property of its citizens, the legislature may, without violating the constitutional prohibition of special or exclusive privileges, make regulations applicable only to particular classes of game or fish or applicable only in a certain territory of the state.[1] Similarly, the State, without violating such constitutional prohibition, may regulate the means, methods, and appliances employed in fishing,[2] provided the regulations bear equally on all persons similarly situated.[3]

The State, without violating such constitutional prohibition, may also authorize the taking and destruction of game for scientific and propagation purposes at a season of the year when its taking and destruction are forbidden for the purposes of food or sport.[4] The State may even discriminate against the taking of fish or game by nonresidents of the state, without violating either the

state constitutions as to the grant of special privileges[5] or the Constitution of the United States as to prohibiting the denial of privileges and immunities of citizens, but may not make such discrimination as between persons residing in different portions of the state.[6] A statute which grants exclusive rights to hunt game is unconstitutional;[7] the same is true of a statute granting exclusive rights to catch fish[8] or to take oysters[9] in any part of the navigable waters of the state. A statute which restricts the right to fish to citizens possessing the qualifications of voters is unreasonable and void.[10] Statutory provisions prohibiting a Native-American from taking game or fish when off the reservation[11] and prohibiting the sale of a license to such a person[12] have been held void.

Footnotes

1 Ariz.—Begay v. Sawtelle, 53 Ariz. 304, 88 P.2d 999 (1939).
Md.—State v. Kennerly, 204 Md. 412, 104 A.2d 632 (1954).
Wash.—McMillan v. Sims, 132 Wash. 265, 231 P. 943 (1925).
Recreational hunting
Recreational hunting is not activity protected under the Privileges and Immunities Clause of the Federal Constitution.
Alaska—Shepherd v. State, Dept. of Fish and Game, 897 P.2d 33 (Alaska 1995).

2 Or.—Anthony v. Veatch, 189 Or. 462, 220 P.2d 493 (1950).
Wash.—State v. Hals, 90 Wash. 540, 156 P. 395 (1916).

3 Or.—Miles v. Veatch, 189 Or. 506, 221 P.2d 905 (1950).
Tex.—Brownsville Shrimp Co. v. Miller, 207 S.W.2d 911 (Tex. Civ. App. Galveston 1947), writ refused n.r.e.
Wash.—State ex rel. Campbell v. Case, 182 Wash. 334, 47 P.2d 24 (1935).

4 Wash.—State v. Nelson, 146 Wash. 17, 261 P. 796 (1927).

5 Or.—State v. Catholic, 75 Or. 367, 147 P. 372 (1915).

6 Ark.—Jonesboro, L.C. & E.R. Co. v. Adams, 117 Ark. 54, 174 S.W. 527 (1915).

7 Ark.—Jonesboro, L.C. & E.R. Co. v. Adams, 117 Ark. 54, 174 S.W. 527 (1915).
N.M.—State ex rel. State Game Commission v. Red River Valley Co., 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421 (1945).

8 N.M.—State ex rel. State Game Commission v. Red River Valley Co., 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421 (1945).
Or.—Johnson v. Hoy, 151 Or. 196, 47 P.2d 252 (1935); Monroe v. Withycombe, 84 Or. 328, 165 P. 227 (1917).

9 N.J.—State v. Post, 55 N.J.L. 264, 26 A. 683 (N.J. Sup. Ct. 1893).

10 Ark.—State v. Johnson, 172 Ark. 866, 291 S.W. 89 (1927).

11 Ariz.—Begay v. Sawtelle, 53 Ariz. 304, 88 P.2d 999 (1939).

12 Ariz.—Begay v. Sawtelle, 53 Ariz. 304, 88 P.2d 999 (1939).

16B C.J.S. Constitutional Law § 1221

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

3. Constitutionality of Particular Grants by State

§ 1221. Limitation on right to engage in profession or occupation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2882, 2884 to 2887, 2889

Statutory provisions which prescribe reasonable qualifications for persons desiring to engage in the practice of a profession or occupation are not void as a grant of special privileges or immunities.

Statutory provisions which prescribe certain qualifications for persons desiring to engage in the practice of a profession are not void as a grant of special privileges or immunities.[1] Where the state legislature considers it for the benefit of the public, it may place conditions on the carrying on of certain kinds of business[2] as by prohibiting passenger transportation corporations from operating over state highways without a certificate of public convenience and necessity.[3]

On the other hand, a law prescribing conditions for engaging in a particular business or profession is void where it arbitrarily and unreasonably discriminates between persons similarly situated.[4] The same is true of laws which discriminate in favor of residents as against nonresidents,[5] or vest in an executive board arbitrary discretion to grant or to refuse the privilege of engaging in a particular business,[6] or provide that a state commission shall not authorize the manufacture and sale of a particular product where existing facilities are adequate.[7]

Footnotes

1 Ill.—People v. McGinley, 329 Ill. 173, 160 N.E. 186 (1928).
Kan.—Depew v. Wichita Ass'n of Credit Men, 142 Kan. 403, 49 P.2d 1041 (1935).
Or.—Phillips v. City of Bend, 192 Or. 143, 234 P.2d 572 (1951).

2 Cal.—In re Marriott, 218 Cal. 179, 22 P.2d 692 (1933).
Ohio—Columbus Auction House, Inc. v. State, 69 Ohio App. 2d 1, 23 Ohio Op. 3d 9, 429 N.E.2d 1073 (10th Dist. Franklin County 1980).
Tenn.—City of Chattanooga v. Fanburg, 196 Tenn. 226, 265 S.W.2d 15, 42 A.L.R.2d 1200 (1954).

3 Cal.—In re Marriott, 218 Cal. 179, 22 P.2d 692 (1933).

4 Ariz.—Atchison, T. & S. F. Ry. Co. v. State, 33 Ariz. 440, 265 P. 602, 58 A.L.R. 563 (1928).
Cal.—Ex parte Wacholder, 1 Cal. App. 2d 254, 36 P.2d 705 (3d Dist. 1934).
Ill.—People v. Schaeffer, 310 Ill. 574, 142 N.E. 248 (1923).
Wyo.—Powell v. Daily, 712 P.2d 356 (Wyo. 1986).

5 Ark.—Ex parte Deeds, 75 Ark. 542, 87 S.W. 1030 (1905).
Or.—Ideal Tea Co. v. City of Salem, 77 Or. 182, 150 P. 852 (1915).
Wash.—Ralph v. City of Wenatchee, 34 Wash. 2d 638, 209 P.2d 270 (1949).
Wyo.—Powell v. Daily, 712 P.2d 356 (Wyo. 1986).

6 Ill.—Sadler v. People, 188 Ill. 243, 58 N.E. 906 (1900).

7 Ark.—Cap F. Bourland Ice Co. v. Franklin Utilities Co., 180 Ark. 770, 22 S.W.2d 993, 68 A.L.R. 1018 (1929).

End of Document

16B C.J.S. Constitutional Law § 1222

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

B. Grants of Special Privileges and Immunities

3. Constitutionality of Particular Grants by State

§ 1222. Regulation of sale of intoxicating liquors

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2870, 2871, 2873 to 2876, 2878, 2880 to 2885, 2888, 2890, 2892 to 2894, 2896 to 2907

Those provisions of state constitutions which forbid the grant of special or exclusive privileges or immunities are not violated by statutes regulating the sale of intoxicating liquors.

State constitutions which forbid the grant of special or exclusive privileges or immunities are not violated by statutes reasonably designed to protect the public health, morals, or welfare.[1] Accordingly, a state may enact laws regulating the issue of licenses to sell liquor[2] or forbidding the sale of liquor in local option territory[3] or territory outside of cities and towns.[4] The State may prohibit the sale or offer for sale of liquor having the appearance, odor, and taste of beer without the original labels on the container.[5]

While a monopoly in the sale of intoxicating liquors may be granted by the legislature in the exercise of its police power,[6] a statute is void which grants to individuals the profits to be derived from such a monopoly.[7]

Footnotes

1 Ind.—Schmitt v. F. W. Cook Brewing Co., 187 Ind. 623, 120 N.E. 19, 3 A.L.R. 270 (1918).
Tenn.—State ex rel. Saperstein v. Bass, 177 Tenn. 609, 152 S.W.2d 236 (1941).

2 Ind.—Klipsch v. Indiana Alcoholic Beverage Com'n, 215 Ind. 616, 21 N.E.2d 701 (1939).
Iowa—In re Carragher, 149 Iowa 225, 128 N.W. 352 (1910).
Kan.—Johnson v. Board of Com'rs of Reno County, 147 Kan. 211, 75 P.2d 849 (1938).

3 Or.—State ex rel. Gibson v. Richardson, 48 Or. 309, 85 P. 225 (1906).

4 Iowa—Beck v. Woodruff, 148 Iowa 193, 126 N.W. 1107 (1910).

5 Mo.—State v. Tallo, 308 Mo. 584, 274 S.W. 466 (1925).

6 Utah—Utah Mfrs.' Ass'n v. Stewart, 82 Utah 198, 23 P.2d 229 (1933).

7 Ala.—Town of Elba v. Rhodes, 142 Ala. 689, 38 So. 807 (1905).
Utah—Utah Mfrs.' Ass'n v. Stewart, 82 Utah 198, 23 P.2d 229 (1933).

End of Document

16B C.J.S. Constitutional Law VI XV C Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Fourteenth Amendment
A.L.R. Index, Privileges and Immunities
West's A.L.R. Digest, Constitutional Law 2860, 2861, 2863 to 2868, 2870, 2871, 2873 to 2878, 2880 to 2885, 2887 to 2890, 2892, 2894, 2896 to 2907, 2910 to 2916, 2920, 2922 to 2926, 2929 to 2931

End of Document

16B C.J.S. Constitutional Law § 1223

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

1. Nonresidents and Foreign Corporations

§ 1223. Denial of privileges and immunities to nonresidents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2935 to 2945, 2950, 2951, 2953 to 2959

The Federal Constitution prohibits discrimination by a state against citizens of other states based only on the fact of citizenship, but it does not preclude discrimination between citizens and noncitizens based on a valid independent reason.

The United States Constitution[1] prohibits discrimination by a state against citizens of other states based only on the fact of citizenship.[2] However, discrimination between citizens and noncitizens based on a valid independent reason is not precluded.[3] If the challenged restriction deprives a nonresident of a protected privilege or immunity, the restriction is invalid under the Privileges and Immunities Clause unless there is a substantial reason for the difference in treatment,[4] and the discrimination practiced against nonresidents bears a substantial relationship to the state's objective.[5]

A state may impose on nonresidents reasonable conditions of doing business in the state, especially when like conditions are imposed on its own citizens.[6] The State, in the exercise of its police power, may provide that only residents of the state may be authorized to engage in the practice of certain professions or the conduct of certain kinds of business requiring special qualifications.[7] However, neither a state nor a municipality may discriminate against the right of individuals to pursue a lawful

calling therein solely on the ground that they are nonresidents.[8] Nevertheless, privileges may on reasonable grounds be restricted to those persons acquainted with conditions in the state, as in some professions or occupations, although citizens of other states are indirectly discriminated against.[9]

In pursuance of its power to control the property of the State for the benefit of its own citizens, the State may forbid certain acts by nonresidents.[10] The fact that a state owns a resource does not, of itself, completely remove a residency law concerning such resource from the prohibition of the Privileges and Immunities Clause of the Federal Constitution.[11] Thus, it has been held that a state may not use its control over a resource to create an absolute employment preference for its own residents.[12]

Since the right to act as an executor[13] or administrator[14] is not a privilege or immunity of a citizen of the United States or of a state, it follows that a state may discriminate against nonresidents as to the appointment of persons to these positions. However, statutes excluding all nonresident persons from being trustees have been held unconstitutional.[15]

To prove substantial justification for a statute alleged to violate the Privileges and Immunities Clause, a state has the burden of proving there is a valid independent reason for the disparate treatment and that nonresidents are a peculiar source of evil at which the statute is aimed.[16] The Privileges and Immunities Clause requires nonresidents to be the peculiar source of evil rather than merely a contributor to problem.[17] Before a court hearing a Privileges and Immunities Clause challenge to a statute determines whether nonresidents constitute the peculiar evil, it first must find that evil was one in which statute is aimed.[18] Under the Privileges and Immunities Clause, there must be some evidence of the benefits of a residents-preference law in dealing with a problem created by nonresidents.[19]

In determining whether a residency-based restriction of an activity offends the privileges and immunities protections, the court undertakes a two-step inquiry; first, the activity in question must be sufficiently basic to the livelihood of the nation as to fall within the purview of the Privileges and Immunities Clause, and if the challenged restriction deprives nonresidents of a protected privilege, the restriction is invalidated only if it is not closely related to the advancement of a substantial state interest.[20] In addition, the court considers, among other things, whether a less restrictive means of regulation are available and must distinguish between incidental discrimination against nonresidents and discrimination that imposes too heavy a burden on their privileges.[21] State exclusion against nonresidents need not be absolute to be actionable under the Privileges and Immunities Clause.[22]

Any regulation or prohibition imposed on both residents and nonresidents cannot be held a denial or abridgment of the privileges or immunities of nonresidents although it may subject them to greater inconvenience or expense.[23] In other words, while the Privileges and Immunities Clause forbids a state from intentionally giving its own citizens a competitive advantage in business or employment, the Clause does not require that a state tailor its every action to avoid any incidental effect on out-of-state tradesmen.[24]

Marriage.

Statutes prohibiting contract of marriage or issuance of marriage licenses in cases involving nonresidents intending to continue living in jurisdiction in which the marriage would be void or otherwise prohibited did not violate Privileges and Immunities Clause; statute did not discriminate between residents and nonresidents but between nonresidents whose marriages would be prohibited under the laws of their home states and nonresidents whose marriages would not be prohibited under the laws of their home states.[25]

CUMULATIVE SUPPLEMENT

Cases:

Courts employ a two-part test to determine whether disparate treatment violates the Privileges and Immunities Clause, under which, first, the activity in question must be sufficiently basic to the livelihood of the nation as to fall within the purview of the Clause, and, second, if the challenged restriction deprives non-residents of a protected privilege, courts will invalidate it only if they conclude that the restriction is not closely related to the advancement of a substantial state interest. U.S.C.A. Const. Art. 4, § 2, cl. 1. Marilley v. Bonham, 802 F.3d 958 (9th Cir. 2015).

Missouri's Liquor Control Law, which required residency to obtain retail license, did not violate Privileges and Immunities Clause by denying out-of-state professional wine merchant privilege to engage in his occupation in state upon same terms as Missouri citizens; merchant's right to pursue his occupation across state lines was not protected by Privileges and Immunities Clause, and merchant's occupation was subject to limitations imposed by Twenty-first Amendment. U.S. Const. art. 4, § 2, cl. 1; U.S. Const. Amend. 21; Mo. Ann. Stat. §§ 311.050, 311.060.1. Sarasota Wine Market, LLC v. Parson, 381 F. Supp. 3d 1094 (E.D. Mo. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Art. IV, § 2, cl. 1.

2 U.S.—Hicklin v. Orbeck, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978); Bethesda Lutheran Homes and Services, Inc. v. Leean, 122 F.3d 443 (7th Cir. 1997).
Iowa—Borden v. Selden, 259 Iowa 808, 146 N.W.2d 306 (1966).
N.J.—Rubin v. Glaser, 166 N.J. Super. 258, 399 A.2d 984 (App. Div. 1979), judgment aff'd, 83 N.J. 299, 416 A.2d 382 (1980).
Wyo.—Schakel v. State, 513 P.2d 412 (Wyo. 1973).

3 U.S.—Hicklin v. Orbeck, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978); Tangier Sound Waterman's Ass'n v. Pruitt, 4 F.3d 264 (4th Cir. 1993).
Iowa—Borden v. Selden, 259 Iowa 808, 146 N.W.2d 306 (1966).
N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).
Vitality of nation
It is only with respect to those privileges and immunities bearing upon the vitality of the nation as a single entity that the state must treat all citizens, resident and nonresident, equally.
U.S.—Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265 (3d Cir. 1994).

4 U.S.—Barnard v. Thorstenn, 489 U.S. 546, 109 S. Ct. 1294, 103 L. Ed. 2d 559 (1989); Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985).

5 U.S.—Barnard v. Thorstenn, 489 U.S. 546, 109 S. Ct. 1294, 103 L. Ed. 2d 559 (1989); Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985).
Closely related to advancement of a substantial state interest
U.S.—Nelson v. Geringer, 295 F.3d 1082 (10th Cir. 2002).

6 Iowa—Davidson v. Henry L. Doherty & Co., 214 Iowa 739, 241 N.W. 700, 91 A.L.R. 1308 (1932).

7 Ky.—King v. Kentucky Board of Pharmacy, 160 Ky. 74, 169 S.W. 600 (1914).

8 U.S.—United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984).
Alaska—Noll v. Alaska Bar Ass'n, 649 P.2d 241 (Alaska 1982).
N.Y.—Gordon v. Committee on Character and Fitness, 48 N.Y.2d 266, 422 N.Y.S.2d 641, 397 N.E.2d 1309 (1979).

W. Va.—Sargus v. West Virginia Bd. of Law Examiners, 170 W. Va. 453, 294 S.E.2d 440 (1982).

9 Cal.—Quong Ham Wah Co., v. Industrial Acc. Commission of Cal., 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190 (1920).

10 Ark.—State v. Smith, 71 Ark. 478, 75 S.W. 1081 (1903).

11 U.S.—Hicklin v. Orbeck, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

12 U.S.—United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984); Hicklin v. Orbeck, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978); Pittsburgh Federation of Teachers Local 400, Am. Federation of Teachers, AFL-CIO v. Aaron, 417 F. Supp. 94 (W.D. Pa. 1976).

N.Y.—Salla v. Monroe County, 48 N.Y.2d 514, 423 N.Y.S.2d 878, 399 N.E.2d 909 (1979).

13 Ill.—In re Mulford, 217 Ill. 242, 75 N.E. 345 (1905).

14 Ill.—In re McWhirter's Estate, 235 Ill. 607, 85 N.E. 918 (1908).

15 U.S.—Shirk v. City of La Fayette, 52 F. 857 (C.C.D. Ind. 1892).

16 U.S.—A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865 (3d Cir. 1997).

17 U.S.—A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865 (3d Cir. 1997).

18 U.S.—A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865 (3d Cir. 1997).

19 U.S.—W.C.M. Window Co., Inc. v. Bernardi, 730 F.2d 486 (7th Cir. 1984).

20 U.S.—Parnell v. Supreme Court of Appeals of West Virginia, 110 F.3d 1077 (4th Cir. 1997).

Ariz.—Big D Const. Corp. v. Court of Appeals for State of Ariz., Div. One, 163 Ariz. 560, 789 P.2d 1061, 89 A.L.R.4th 567 (1990).

Restrictions on new residents

Statute limiting new residents of state, for 12 months, to temporary assistance to needy families benefits they would have received in state of their prior residence was unconstitutional as violating Fourteenth Amendment right to travel; state's legitimate interest in saving money provided no justification for discrimination among equally eligible citizens, neither duration of recipients' current residence nor identity of their prior states of residence had any relevance to their need for benefits, and those factors did not bear any relationship to state's interest in making equitable allocation of funds to be distributed among its needy citizens.

U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

21 U.S.—Tolchin v. Supreme Court of the State of N.J., 111 F.3d 1099 (3d Cir. 1997).

22 U.S.—Sestric v. Clark, 765 F.2d 655 (7th Cir. 1985).

23 U.S.—Richter v. East St. Louis & S. Ry. Co., 20 F.2d 220 (E.D. Mo. 1927); Standard Computing Scale Co. v. Farrell, 242 F. 87 (S.D. N.Y. 1916), aff'd, 249 U.S. 571, 39 S. Ct. 380, 63 L. Ed. 780 (1919).

La.—Town of St. Martinville v. Dugas, 158 La. 262, 103 So. 761 (1925) (disapproved of on other grounds by, State v. Latil, 231 La. 551, 92 So. 2d 63 (1956)).

24 U.S.—McBurney v. Young, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); Tolchin v. Supreme Court of the State of N.J., 111 F.3d 1099 (3d Cir. 1997).

25 Mass.—Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 844 N.E.2d 623 (2006).

End of Document

16B C.J.S. Constitutional Law § 1224

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

1. Nonresidents and Foreign Corporations

§ 1224. Denial of privileges and immunities to foreign corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2913, 2920, 2926, 2939, 2953, 2958

A state may prohibit foreign corporations from doing business within its boundaries, or, as a general rule, may grant the privilege on such terms as its pleases.

Since a corporation is not a citizen within the meaning either of the Constitution as originally adopted or of the Fourteenth Amendment,[1] it follows that a state may prohibit a foreign corporation from doing business within its boundaries, or may grant such privilege on such conditions as it deems best, without violating such constitutional provisions or similar provisions in a state constitution.[2]

On the other hand, a state which admits a foreign corporation to do business therein cannot exclude citizens of other states from transacting business with that corporation on terms of equality with citizens of the state.[3] A statute requiring a foreign corporation, as a condition precedent to obtaining a permit to do business within the state, to surrender a right and privilege secured to it by the Constitution and laws of the United States is unconstitutional.[4]

Footnotes

1 § 1204.

2 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).
Ala.—Fidelity & Deposit Co. of Maryland v. Goodwyn, 231 Ala. 44, 163 So. 341 (1935).
Ill.—People v. Woman's Home Missionary Soc. of M.E. Church, 303 Ill. 418, 135 N.E. 749 (1922).
Ind.—Jackson v. Mauck, 189 Ind. 262, 126 N.E. 851 (1920).
Mich.—Hemphill v. Orloff, 238 Mich. 508, 213 N.W. 867, 58 A.L.R. 507 (1927), aff'd, 277 U.S. 537, 48 S. Ct. 577, 72 L. Ed. 978 (1928).
Mo.—Roxana Petroleum Corp. v. Smith, 24 S.W.2d 652 (Mo. Ct. App. 1930).
Wis.—State v. Dammann, 198 Wis. 265, 224 N.W. 139 (1929).

3 U.S.—Blake v. McClung, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898).

4 U.S.—Blake v. McClung, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898).
Discrimination against foreign corporations in the matter of taxation or license fees is discussed §§ 1231, 1233.

End of Document

16B C.J.S. Constitutional Law § 1225

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

2. Police Power and Regulation

§ 1225. State's exercise of police power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2910 to 2916, 2920, 2922 to 2926, 2929 to 2931, 2935 to 2945, 2950, 2951, 2953, 2959

While a state, in the exercise of its police power, may pass laws for the health, morals, safety, and general welfare of persons within its jurisdiction, such exercise of power must not discriminate arbitrarily between citizens.

Neither the guaranty contained in the original United States Constitution of the privileges and immunities of citizens of the several states nor that contained in the Fourteenth Amendment takes away or impairs the police power of the several states to pass reasonable laws for the promotion of the health, morals, safety, and general welfare of persons subject to their jurisdiction.[1] The Privileges and Immunities Clause applies only to protect citizens of one state from discriminatory treatment in another state and does not limit the state's police power over its own citizens.[2]

The Privileges and Immunities Clauses have no application to statutes enacted in the exercise of that power.[3] On the other hand, the police power is subject to the constitutional guaranty of equality of privilege,[4] and an exercise of the police power must not

arbitrarily discriminate between citizens.[5] Nevertheless, the protections afforded by constitutional clauses protecting privileges and immunities of citizens are not absolute and will yield to reasonable exercise of state police powers.[6]

While in the matter of police regulation, the powers of the state are very broad, it cannot single out a corporation, any more than a natural person, and subject it to burdens which are not cast on others similarly situated, without contravening the limitations of the Fourteenth Amendment of the Federal Constitution.[7]

Footnotes

1 U.S.—Sullivan v. Shaw, 6 F. Supp. 112 (S.D. Cal. 1934).
Fla.—Stephens v. Stickel, 146 Fla. 104, 200 So. 396 (1941).
Mo.—State ex rel. Becker v. Wellston Sewer Dist. of St. Louis County, 332 Mo. 547, 58 S.W.2d 988 (1933).
N.Y.—People ex rel. Bryant v. Zimmerman, 213 A.D. 414, 210 N.Y.S. 269 (4th Dep't 1925), aff'd, 241 N.Y. 405, 150 N.E. 497, 43 A.L.R. 909 (1926), aff'd, 278 U.S. 63, 49 S. Ct. 61, 73 L. Ed. 184, 62 A.L.R. 785 (1928).
Or.—Daniels v. City of Portland, 124 Or. 677, 265 P. 790, 59 A.L.R. 512 (1928).
Tenn.—Mensi v. Walker, 160 Tenn. 468, 26 S.W.2d 132 (1930).
W. Va.—Tweel v. West Virginia Racing Commission, 138 W. Va. 531, 76 S.E.2d 874 (1953).

2 Me.—State v. Hayes, 603 A.2d 869 (Me. 1992).

3 Wash.—Frach v. Schoettler, 46 Wash. 2d 281, 280 P.2d 1038 (1955).

4 N.C.—State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

5 Ind.—City of Richmond v. Dudley, 129 Ind. 112, 28 N.E. 312 (1891).
S.C.—Schloss Poster Advertising Co. v. City of Rock Hill, 190 S.C. 92, 2 S.E.2d 392 (1939).

6 Mont.—State v. Barnes, 232 Mont. 405, 758 P.2d 264 (1988).

7 U.S.—Southern Bell Tel. & Tel. Co. v. Town of Calhoun, 287 F. 381 (W.D. S.C. 1923).

16B C.J.S. Constitutional Law § 1226

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

2. Police Power and Regulation

§ 1226. Regulation of trades, professions, or businesses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2923, 2926, 2927, 2929, 2930, 2942, 2943, 2950, 2953 to 2958, 2959

The right to labor, to pursue any lawful employment in a lawful manner, and to make lawful contracts are rights enjoyed by citizens under the protection of the Constitution of the United States; but a state or municipality, in the exercise of its police power, may regulate such rights by reasonable enactments in the interest of the public welfare.

The right to labor, to pursue any lawful employment in a lawful manner, and to make lawful contracts are rights enjoyed by a citizen under the protection of the Constitution of the United States,[1] and any statute or ordinance which arbitrarily and unreasonably abridges such rights is unconstitutional.[2]

This protection is enjoyed, however, subject to the police power of the state to regulate professions, trades, occupations, and contracts in the interest of the public welfare.[3] The State may place reasonable conditions or restrictions, on the exercise of various trades, occupations, or employments,[4] or on the maintenance of certain kinds of business.[5]

The states, without violation of the rights secured to citizens by the Federal Constitution, may place conditions or restrictions on the exercise of the professions of medicine and surgery,[6] such as requiring a governmental examination[7] and a certificate

of qualification from the state board of medical examiners[8] or a medical school or college diploma.[9] The State may regulate membership in a state board of health.[10] Additionally, the State may place reasonable conditions or restrictions on the exercise of the professions of dentistry[11] and pharmacy.[12]

The right to practice law in state courts is not a privilege or immunity under the Fourteenth Amendment to the United States Constitution.[13] Where a state requirement for the practice of law treats both residents and nonresidents alike, the requirement does not violate the Privileges and Immunities Clause.[14] However, state rules allowing residents but preventing nonresidents from gaining admission to the bar by motion, without having to take the state bar examination, violated the Privileges and Immunities Clause.[15]

A state, without violation of the constitutional provisions in question, may forbid trusts, monopolies, and combinations in restraint of trade[16] and may pass laws for the prohibition of unfair competition.[17] Also, a state may prohibit and regulate the sale of certain goods.[18] A state may regulate the sales of goods in bulk,[19] and the making and construction of contracts,[20] and forbid such as are deemed detrimental to the public welfare.[21]

A state or municipality may not discriminate against the sale within its jurisdiction of certain articles of merchandise merely on the ground that they have been produced outside the state,[22] or prohibit the transportation or sale without the state of natural gas produced within the state,[23] or make a breach of contract to labor a criminal offense.[24] A statute fixing or regulating the price of personal services which are not performed in connection with a business affected with a public interest or devoted to a public purpose is also invalid.[25]

Statutes regulating the time and medium of payment of wages to employees[26] or the hours of employment[27] have generally been upheld as against the objection that they deny or abridge the privileges or immunities of citizens. However, a statute which regulates wages and hours in a particular business, in which the regulation has no tendency to protect the public health or welfare, is invalid.[28]

Footnotes

1 U.S.—Edwards v. Leaver, 102 F. Supp. 698 (D.R.I. 1952).
Cal.—Whitcomb v. Emerson, 46 Cal. App. 2d 263, 115 P.2d 892 (4th Dist. 1941).
N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).
Tex.—Ex parte Talkington, 132 Tex. Crim. 361, 104 S.W.2d 495 (1937).

2 U.S.—Stalland v. South Dakota Bd. of Bar Examiners, 530 F. Supp. 155 (D.S.D. 1982).
Cal.—People v. Osborne, 17 Cal. App. 2d Supp. 771, 59 P.2d 1083 (App. Dep't Super. Ct. 1936).
Kan.—Little v. Smith, 124 Kan. 237, 257 P. 959, 57 A.L.R. 100 (1927).
Pa.—Brown v. Boardman, 33 Pa. D. & C. 581, 1938 WL 2488 (C.P. 1938).
W. Va.—Sargus v. West Virginia Bd. of Law Examiners, 170 W. Va. 453, 294 S.E.2d 440 (1982).
Denial of privileges and immunities to nonresidents, generally, see § 1223.
Validity of state statute or local ordinance requiring, or giving preference to, the employment of residents by contractors or subcontractors engaged in, or awarded contracts for, the construction of public works or improvements, 36 A.L.R.4th 941.

3 U.S.—Hawkins v. Moss, 503 F.2d 1171 (4th Cir. 1974).
Ala.—Messer v. Southern Airways Sales Co., 245 Ala. 462, 17 So. 2d 679 (1944).
Tex.—Texas Optometry Bd. v. Lee Vision Center, Inc., 515 S.W.2d 380 (Tex. Civ. App. Eastland 1974), writ refused n.r.e., (Feb. 26, 1975).
W. Va.—Tweel v. West Virginia Racing Commission, 138 W. Va. 531, 76 S.E.2d 874 (1953).

4 U.S.—Glenovich v. Noerenberg, 346 F. Supp. 1286 (D. Alaska 1972), judgment aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).
Nev.—Norman v. City of Las Vegas, 64 Nev. 38, 177 P.2d 442 (1947).
N.Y.—Baldwin v. Standard Acc. Ins. Co. (Olivit Action), 237 A.D. 334, 261 N.Y.S. 507 (3d Dep't 1932), aff'd, 262 N.Y. 575, 188 N.E. 71 (1933).
Okla.—Application of Richardson, 1947 OK 347, 199 Okla. 406, 184 P.2d 642 (1947).
Tex.—Stockton v. Parks and Wild Life Commission, 571 S.W.2d 338 (Tex. Civ. App. Austin 1978).

5 U.S.—Whisler v. City of West Plains, Mo., 43 F. Supp. 654 (W.D. Mo. 1942), judgment aff'd, 137 F.2d 938 (C.C.A. 8th Cir. 1943).
Ark.—Noble v. Davis, 204 Ark. 156, 161 S.W.2d 189 (1942).
R.I.—Prata Undertaking Co. v. State Bd. of Embalming & Funeral Directing, 55 R.I. 454, 182 A. 808, 104 A.L.R. 389 (1936).
Wash.—City of Spokane v. Coon, 3 Wash. 2d 243, 100 P.2d 36 (1940).

6 Or.—State v. Buck, 200 Or. 87, 262 P.2d 495 (1953).
Wis.—State v. Michaels, 226 Wis. 574, 277 N.W. 157 (1938).

7 Ill.—Rios v. Jones, 63 Ill. 2d 488, 348 N.E.2d 825 (1976).
W. Va.—State v. Morrison, 98 W. Va. 289, 127 S.E. 75 (1925).

8 Ala.—Wideman v. State, 20 Ala. App. 422, 104 So. 438 (1924).

9 Ala.—State v. State Board of Medical Examiners, 209 Ala. 9, 95 So. 295 (1923).

10 R.I.—State v. Heffernan, 40 R.I. 121, 100 A. 55 (1917).

11 Mich.—Lewis v. Michigan State Bd. of Dentistry, 277 Mich. 334, 269 N.W. 194 (1936).
Minn.—State v. Graves, 166 Minn. 496, 207 N.W. 560 (1926), aff'd, 272 U.S. 425, 47 S. Ct. 122, 71 L. Ed. 331 (1926).
Wash.—Campbell v. State, 12 Wash. 2d 459, 122 P.2d 458 (1942).

12 Ky.—King v. Kentucky Board of Pharmacy, 160 Ky. 74, 169 S.W. 600 (1914).
Or.—Anderson v. Farr, 97 Or. 137, 191 P. 346 (1920).

13 U.S.—Metz v. Supreme Court of Ohio, 46 Fed. Appx. 228 (6th Cir. 2002).
Ark.—Lewellen v. Supreme Court Committee on Professional Conduct, 353 Ark. 641, 110 S.W.3d 263 (2003).

Privilege under Article IV

U.S.—Barnard v. Thorstenn, 489 U.S. 546, 109 S. Ct. 1294, 103 L. Ed. 2d 559 (1989).

14 U.S.—Paciulan v. George, 229 F.3d 1226 (9th Cir. 2000).
Minn.—Petition of Dolan, 445 N.W.2d 553 (Minn. 1989).

15 U.S.—Friedman v. Supreme Court of Virginia, 822 F.2d 423 (4th Cir. 1987), judgment aff'd, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988); Sommermeyer v. Supreme Court of the State of Wyo., 871 F.2d 111 (10th Cir. 1989).

16 Mass.—Com. v. Strauss, 191 Mass. 545, 78 N.E. 136 (1906).
Mich.—Attorney General v. A. Booth & Co., 143 Mich. 89, 106 N.W. 868 (1906).

17 Ga.—Emory v. Grand United Order of Odd Fellows, 140 Ga. 423, 78 S.E. 922 (1913).

18 U.S.—Whitfield v. State of Ohio, 297 U.S. 431, 56 S. Ct. 532, 80 L. Ed. 778 (1936).
Wyo.—State v. W.S. Buck Mercantile Co., 38 Wyo. 47, 264 P. 1023, 57 A.L.R. 675 (1928).

19 Mich.—Musselman Grocery Co. v. Kidd, Dater & Price Co., 151 Mich. 478, 115 N.W. 409 (1908), aff'd, 217 U.S. 461, 30 S. Ct. 606, 54 L. Ed. 839 (1910).

20 Ala.—State Life Ins. Co. of Indianapolis v. Westcott, 166 Ala. 192, 52 So. 344 (1910).

21 U.S.—Booth v. People of State of Illinois, 184 U.S. 425, 22 S. Ct. 425, 46 L. Ed. 623 (1902).
Cal.—Parker v. Otis, 130 Cal. 322, 62 P. 571 (1900), aff'd, 187 U.S. 606, 23 S. Ct. 168, 47 L. Ed. 323 (1903).

22 U.S.—Welton v. State of Missouri, 91 U.S. 275, 23 L. Ed. 347, 1875 WL 17938 (1875).
Ala.—City of Cullman v. Arndt, 125 Ala. 581, 28 So. 70 (1900).

23 U.S.—Kansas Natural Gas Co. v. Haskell, 172 F. 545 (C.C. E.D. Okla. 1909), aff'd, 221 U.S. 229, 31 S. Ct. 564, 55 L. Ed. 716 (1911).

24 Ala.—Toney v. State, 141 Ala. 120, 37 So. 332 (1904).
Miss.—State v. Armstead, 103 Miss. 790, 60 So. 778 (1913).

25 Ark.—Noble v. Davis, 204 Ark. 156, 161 S.W.2d 189 (1942).

Or.—Christian v. La Forge, 194 Or. 450, 242 P.2d 797 (1952).

26 Mass.—In re House Bill No. 1,230, 163 Mass. 589, 40 N.E. 713 (1895).

W. Va.—Peel Splint Coal Co. v. State, 36 W. Va. 802, 15 S.E. 1000 (1892).

27 Nev.—In re Boyce, 27 Nev. 299, 75 P. 1 (1904).

N.Y.—People v. Warren, 28 N.Y.S. 303 (Sup 1894).

Or.—Ex parte Steiner, 68 Or. 218, 137 P. 204 (1913).

28 Ark.—Noble v. Davis, 204 Ark. 156, 161 S.W.2d 189 (1942).

End of Document

16B C.J.S. Constitutional Law § 1227

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

2. Police Power and Regulation

§ 1227. Regulation of intoxicating liquors

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2928

While a state or municipality may prohibit or regulate the sale, manufacture, or possession of intoxicating liquors without denying or abridging the privileges or immunities of citizens, regulations which discriminate against nonresidents are unconstitutional.

The right to sell intoxicating liquor,[1] or to possess or manufacture it for personal use,[2] is not one of the privileges or immunities of a citizen of a state or of the United States protected by the Federal Constitution. Hence, a state or municipality may require the payment of a license or privilege tax,[3] or prohibit or regulate such sale, manufacture, or possession,[4] without violating the privileges or immunities clauses of the Federal Constitution.

Moreover, the right to a license to sell liquor is not within the protection of the guaranties of privileges and immunities.[5] The State may limit the grant of such licenses, or operation under licenses, granted, by regulations limiting the number of licenses,[6] by refusing licenses for sale in stores engaged in other particular businesses,[7] or by refusing a license for premises near a school, hospital, or place of worship unless permission of the governing authority of such building has been obtained.[8] The State may

prescribe terms for credit sales to retailers,[9] regulate the hours of sale,[10] and require employees to be fingerprinted[11] without violating the guaranties of privileges and immunities.

On the other hand, a regulation concerning intoxicating liquors is unconstitutional which discriminates unjustly against nonresidents,[12] as by imposing a heavier license tax on nonresidents than on citizens of the state for the privilege of doing business therein,[13] or by discriminating, in the matter of license taxes, in favor of liquors produced in the taxing state and against the introduction and sale of liquors produced in other states.[14]

Footnotes

1 U.S.—Wylie v. State Bd. of Equalization of Cal., 21 F. Supp. 604 (S.D. Cal. 1937).
Del.—United Cigar-Whelan Stores Corporation v. Delaware Liquor Commission, 41 Del. 74, 15 A.2d 442 (Gen. Sess. 1940).
Fla.—Mears v. Stone, 151 Fla. 760, 10 So. 2d 487 (1942).
Mo.—Peppermint Lounge, Inc. v. Wright, 498 S.W.2d 749 (Mo. 1973).
Neb.—Leeman v. Vocelka, 149 Neb. 702, 32 N.W.2d 274 (1948).
R.I.—Sepe v. Daneker, 76 R.I. 160, 68 A.2d 101 (1949).
Wis.—Weinberg v. Kluchesky, 236 Wis. 99, 294 N.W. 530 (1940).

2 U.S.—Wylie v. State Bd. of Equalization of Cal., 21 F. Supp. 604 (S.D. Cal. 1937).
Vt.—State v. Lucia, 104 Vt. 53, 157 A. 61 (1931).
Wash.—State v. Fabbri, 98 Wash. 207, 167 P. 133 (1917).

3 U.S.—Wylie v. State Bd. of Equalization of Cal., 21 F. Supp. 604 (S.D. Cal. 1937).
W. Va.—Hinebaugh v. James, 119 W. Va. 162, 192 S.E. 177, 112 A.L.R. 59 (1937).
Wis.—Vieau v. Common Council of City of Chippewa Falls, 235 Wis. 122, 292 N.W. 297 (1940).

4 U.S.—Hixson v. Oakes, 265 U.S. 254, 44 S. Ct. 514, 68 L. Ed. 1005 (1924).
Fla.—City of Miami v. State ex rel. Green, 131 Fla. 864, 180 So. 45 (1938).
Ill.—Great Atlantic & Pacific Tea Co. v. Mayor and Commissioners of Danville, 367 Ill. 310, 11 N.E.2d 388, 113 A.L.R. 1386 (1937).
Neb.—Bali Hai', Inc. v. Nebraska Liquor Control Commission, 195 Neb. 1, 236 N.W.2d 614 (1975).
Utah—Utah Mfrs.' Ass'n v. Stewart, 82 Utah 198, 23 P.2d 229 (1933).
Wash.—State v. Fabbri, 98 Wash. 207, 167 P. 133 (1917).
W. Va.—Hinebaugh v. James, 119 W. Va. 162, 192 S.E. 177, 112 A.L.R. 59 (1937).

5 U.S.—Glicker v. Michigan Liquor Control Commission, 160 F.2d 96 (C.C.A. 6th Cir. 1947).
Del.—United Cigar-Whelan Stores Corporation v. Delaware Liquor Commission, 41 Del. 74, 15 A.2d 442 (Gen. Sess. 1940).

6 N.Y.—Marks v. Bruckman, 170 Misc. 709, 9 N.Y.S.2d 947 (Sup 1939).

7 Del.—United Cigar-Whelan Stores Corporation v. Delaware Liquor Commission, 41 Del. 74, 15 A.2d 442 (Gen. Sess. 1940).

8 Ky.—Beacon Liquors v. Martin, 279 Ky. 468, 131 S.W.2d 446 (1939).

9 Ohio—Glander v. Mendenhall, 68 N.E.2d 101 (Ohio C.P. 1942).

10 Neb.—Griffin v. Gass, 133 Neb. 56, 274 N.W. 193 (1937).
Wis.—Weinberg v. Kluchesky, 236 Wis. 99, 294 N.W. 530 (1940).

11 Nev.—Norman v. City of Las Vegas, 64 Nev. 38, 177 P.2d 442 (1947).

12 U.S.—Premier-Pabst Sales Co. v. McNutt, 17 F. Supp. 708 (S.D. Ind. 1935).
Mich.—People v. Lankton, 197 Mich. 470, 163 N.W. 899 (1917).

13 U.S.—Ward v. State, 79 U.S. 418, 20 L. Ed. 449, 1870 WL 12887 (1870).

14 U.S.—Webber v. State of Virginia, 103 U.S. 344, 26 L. Ed. 565, 1880 WL 18924 (1880).

End of Document

16B C.J.S. Constitutional Law § 1228

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

2. Police Power and Regulation

§ 1228. Regulation of use of highways

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2910 to 2916, 2920, 2922 to 2926, 2929 to 2931, 2935 to 2945, 2950, 2951, 2953, 2959

The privileges or immunities of citizens are not abridged by reasonable regulation as to the use of highways.

Reasonable regulations as to the use of highways do not abridge the privileges or immunities of citizens.[1] The privileges and immunities guaranteed by the Federal Constitution must be harmonized with the right of a state to enforce reasonable regulations as to the operation of motor vehicles on its highways.[2] It has been held that a state may regulate the use of its highways by nonresidents without violating constitutional guaranties.[3]

State or local authorities may, by reasonable regulations in the exercise of the police power, limit the use of streets[4] for public meetings[5] or for selling or distributing literature or merchandise.[6] However, the privilege of a citizen of the United States to use streets and parks for the communication of views on national questions must not, in the guise of regulation, be abridged or denied.[7] Thus, an ordinance making it unlawful for three or more persons assembled on the street to neglect to disperse on instructions of a police officer has been held invalid.[8] On the other hand, an ordinance making it unlawful for persons composing

a crowd which obstructs free passage of the street or sidewalk to fail to disperse when ordered by police officer to do so has been held valid.[9]

Footnotes

1 Ind.—Denny v. City of Muncie, 197 Ind. 28, 149 N.E. 639 (1925).
W. Va.—Darnall Trucking Co. v. Simpson, 122 W. Va. 656, 12 S.E.2d 516 (1940).

2 U.S.—Morrow v. Asher, 55 F.2d 365 (N.D. Tex. 1932).
S.D.—Tri-State Transfer Co. v. Morrison, 63 S.D. 271, 257 N.W. 646 (1934).

3 Tex.—Yellow Cab Transit Co. v. Tuck, 115 S.W.2d 455 (Tex. Civ. App. Dallas 1938), writ refused.

4 U.S.—Whisler v. City of West Plains, Mo., 43 F. Supp. 654 (W.D. Mo. 1942), judgment aff'd, 137 F.2d 938 (C.C.A. 8th Cir. 1943).
Fla.—Stephens v. Stickel, 146 Fla. 104, 200 So. 396 (1941).
Ga.—Fitts v. City of Atlanta, 121 Ga. 567, 49 S.E. 793 (1905).

5 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
Ga.—Fitts v. City of Atlanta, 121 Ga. 567, 49 S.E. 793 (1905).
Ohio—City of Cleveland v. Tussey, 27 Ohio Op. 367, 39 Ohio L. Abs. 554, 13 Ohio Supp. 11 (Mun. Ct. 1943).

6 U.S.—Whisler v. City of West Plains, Mo., 43 F. Supp. 654 (W.D. Mo. 1942), judgment aff'd, 137 F.2d 938 (C.C.A. 8th Cir. 1943).
Fla.—Stephens v. Stickel, 146 Fla. 104, 200 So. 396 (1941).

7 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
Ohio—City of Cleveland v. Tussey, 27 Ohio Op. 367, 39 Ohio L. Abs. 554, 13 Ohio Supp. 11 (Mun. Ct. 1943).

8 Ohio—Village of Deer Park v. Schuster, 16 Ohio Op. 485, 30 Ohio L. Abs. 466, 4 Ohio Supp. 394 (C.P. 1940).

9 Cal.—Ex parte Bodkin, 86 Cal. App. 2d 208, 194 P.2d 588 (1st Dist. 1948).

16B C.J.S. Constitutional Law § 1229

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

2. Police Power and Regulation

§ 1229. Worker's compensation and right to work

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2910 to 2916, 2920, 2922 to 2926, 2929 to 2931, 2935 to 2945, 2950, 2951, 2953, 2959

The privileges and immunities of citizens of the United States are not abridged by an elective workers' compensation act. State constitutional amendments providing that no person shall be denied employment because of membership or nonmembership in a labor union do not deny privileges and immunities.

The privileges and immunities of citizens of the United States are not abridged by an elective workers' compensation act[1] or a compulsory insurance act.[2] A compulsory act providing for compensation to "citizens or residents" of the state has been held not to conflict with constitutional provisions against the abridgment of privileges and immunities,[3] and the same conclusion has been reached as to compulsory acts applicable by their terms to employments outside of the state where the hiring was done within the state.[4]

However, a compulsory act allowing compensation for injuries occurring outside of the state, where the contract of employment was made within the state, only to residents of the state, is invalid[5] although a voluntary act which allows recovery for injury

or death occurring outside the state only if the employee was a resident of the state has been held valid.[6] Except as restrained by treaty obligations, the legislature may exclude nonresident alien dependents from benefits under a workers' compensation act,[7] or allow them only partial compensation,[8] or may deny to nonresident aliens the right of appeal from an order or decision of the state industrial commission.[9]

A statute granting exclusive jurisdiction to the worker's compensation board to determine whether an insurance carrier committed an independent tort in adjusting or settling an injured worker's claim did not violate the privileges and immunities clause of the state constitution because the disparate treatment of worker's compensation carriers as compared to other insurance carriers was reasonably related to the inherent characteristics, which distinguished the unequally treated classes.[10]

State constitutional amendments providing that no person shall be denied employment because of membership or nonmembership in a labor union do not deny privileges and immunities.[11] Where a union is privileged, there is no violation of the Privileges and Immunities Clause where the distinction between the classes is not based on a person's immutable characteristics, and the law leaves the class open for others to join on equal terms.[12]

Footnotes

1 Iowa—Hunter v. Colfax Consol. Coal Co., 175 Iowa 245, 154 N.W. 1037 (1915), opinion amended on other grounds on denial of reh'g, 175 Iowa 245, 157 N.W. 145 (1916).

Waiver

A worker's compensation statute which permits agricultural employers to waive their exemption from compulsory worker's compensation coverage and to accept the application of the state's worker's compensation act does not violate the privileges and immunities clause of the state constitution; because the special privilege is reasonably related to inherent distinctions between the class of employers and the class of employees, and to extent that the optional nature of elective coverage distinguishes between agricultural employers and the general class of employers, the elements inherently distinguishing such classes support differing treatment.

Ind.—Collins v. Day, 644 N.E.2d 72 (Ind. 1994).

2 Ark.—Hagger v. Wortz Biscuit Co., 210 Ark. 318, 196 S.W.2d 1 (1946).

Wash.—State v. Mountain Timber Co., 75 Wash. 581, 135 P. 645 (1913), aff'd, 243 U.S. 219, 37 S. Ct. 260, 61 L. Ed. 685 (1917).

3 Md.—Liggett & Meyers Tobacco Co. v. Goslin, 163 Md. 74, 160 A. 804 (1932).

4 Cal.—Quong Ham Wah Co., v. Industrial Acc. Commission of Cal., 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190 (1920).

Ill.—Beall Bros. Supply Co. v. Industrial Commission, 341 Ill. 193, 173 N.E. 64 (1930).

5 Cal.—Quong Ham Wah Co., v. Industrial Acc. Commission of Cal., 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190 (1920).

6 S.C.—Tedars v. Savannah River Veneer Co., 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914 (1943).

7 N.J.—Gregutis v. Waclark Wire Works, 86 N.J.L. 610, 92 A. 354 (N.J. Ct. Err. & App. 1914).

8 Ky.—Maryland Casualty Co. v. Chamos, 203 Ky. 820, 263 S.W. 370 (1924).

9 Or.—Liimatainen v. State Indus. Acc. Commission, 118 Or. 260, 246 P. 741 (1926).

10 Ind.—Sims v. United States Fidelity & Guar. Co., 782 N.E.2d 345 (Ind. 2003).

11 U.S.—American Federation of Labor, Ariz State Federation of Labor v. American Sash and Door Co, 335 U.S. 538, 69 S. Ct. 260, 93 L. Ed. 222 (1949).

Neb.—Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co., 149 Neb. 507, 31 N.W.2d 477 (1948), aff'd, 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949).

12 Or.—Lane County v. State By and Through Executive Dept., 119 Or. App. 504, 851 P.2d 633 (1993).

End of Document

16B C.J.S. Constitutional Law § 1230

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

2. Police Power and Regulation

§ 1230. Denial of privileges under crimes and criminal procedure

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2860, 2861, 2863 to 2868, 2870, 2871, 2873 to 2878, 2880 to 2885, 2887 to 2890, 2892, 2894, 2896 to 2907, 2910 to 2916, 2920, 2922 to 2926, 2929 to 2931

The Fourteenth Amendment does not prevent a state from making certain acts crimes, or from prescribing the mode and procedure in criminal prosecutions, or the modes and extent of punishment.

Since the Fourteenth Amendment refers to the fundamental rights of the citizens of the United States and not to the privileges or immunities of the individual as a citizen of a state, it does not ordinarily apply to state statutes making certain acts crimes[1] or to modes of, and procedure in, criminal prosecutions in state courts.[2] Similarly, the Fourteenth Amendment does not ordinarily apply to the extent[3] or to the modes[4] of punishment to be inflicted by the state courts.

Statutes providing special punishment for habitual criminals[5] or for those who commit successive offenses[6] do not abridge the privileges and immunities of citizens. A state constitutional privileges and immunities clause does not affect the state's right to punish one offense more severely than another[7] or to establish different degrees of punishment for a criminal offense;[8] such a provision does require that in the administration of criminal justice no person be subject to a greater or different punishment for

an offense than that to which other persons of the same class are subjected.[9] A state may distinguish between serious violent felonies from a general class of felons even though there is not "mathematical nicety."[10]

Since, as a part of the federal constitutional guaranty of privileges and immunities, the right of a citizen to pass freely from one state to another is protected, a state penal statute that, in effect, restricts the free movement through the state of citizens of the United States is in violation of the Privileges and Immunities Clause of the Fourteenth Amendment,[11] and a state has no power to punish a criminal for coming to it from another state by reason of the fact that he has committed a crime in the latter state.[12]

Footnotes

1 Ga.—Dalton v. State, 176 Ga. 645, 169 S.E. 198 (1933).
Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).
Okla.—Ex parte Davis, 66 Okla. Crim. 271, 91 P.2d 799 (1939).
Tenn.—State v. Adams, 137 Tenn. 521, 194 S.W. 579 (1917).

2 U.S.—Schackman v. Arnebergh, 258 F. Supp. 983 (C.D. Cal. 1966).
Cal.—People v. Raffington, 98 Cal. App. 2d 455, 220 P.2d 967 (2d Dist. 1950).
Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).
Kan.—Bailey v. Hudspeth, 164 Kan. 600, 191 P.2d 894 (1948).
Ohio—State v. Fullmer, 76 Ohio App. 335, 32 Ohio Op. 53, 43 Ohio L. Abs. 193, 62 N.E.2d 268 (2d Dist. Montgomery County 1945).

3 Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).
Wash.—State ex rel. R.R. Com'n of Washington v. Oregon R. & Nav. Co., 68 Wash. 160, 123 P. 3 (1912).

4 U.S.—Graham v. State of West Virginia, 224 U.S. 616, 32 S. Ct. 583, 56 L. Ed. 917 (1912).
Iowa—State v. Ronek, 176 N.W.2d 153, 41 A.L.R.3d 1329 (Iowa 1970).

5 Cal.—People v. Naumcheff, 114 Cal. App. 2d 278, 250 P.2d 8 (4th Dist. 1952).
Conn.—State v. Mead, 130 Conn. 106, 32 A.2d 273 (1943).
Idaho—State v. Polson, 93 Idaho 912, 478 P.2d 292 (1970).
Ill.—People v. Lawrence, 390 Ill. 499, 61 N.E.2d 361 (1945).
Kan.—Hill v. Hudspeth, 161 Kan. 376, 168 P.2d 922 (1946).
Okla.—Jump v. Page, 1968 OK CR 13, 437 P.2d 283 (Okla. Crim. App. 1968).

6 Neb.—Poppe v. State, 155 Neb. 527, 52 N.W.2d 422 (1952).

7 Ind.—Taylor v. State, 251 Ind. 236, 236 N.E.2d 825 (1968).

8 Ind.—Taylor v. State, 251 Ind. 236, 236 N.E.2d 825 (1968).

9 Ind.—Taylor v. State, 251 Ind. 236, 236 N.E.2d 825 (1968).
Privileges and Immunities Clauses as precluding discriminatory class legislation with respect to crimes, generally, see § 1241.

10 Ind.—Hatchett v. State, 740 N.E.2d 920 (Ind. Ct. App. 2000).

11 N.Y.—People v. Berck, 32 N.Y.2d 567, 347 N.Y.S.2d 33, 300 N.E.2d 411 (1973).

12 U.S.—U.S. v. Miller, 17 F. Supp. 65 (W.D. Ky. 1936).

16B C.J.S. Constitutional Law § 1231

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

3. Taxes and Licenses

§ 1231. Exercise of taxing power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2925, 2940, 2952

The taxing power of the state is plenary, and the guaranty with respect to privileges and immunities restricts the power only where such a result is clearly required. Whether a tax statute denies or abridges privileges or immunities of citizens depends on its practical operation and effect and not on mere questions of form, construction, or definition.

Rights protected by the Privileges and Immunities Clause include the right to be free from discriminatory taxation.[1] State tax classifications are ordinarily accorded deference; however, when the Privileges and Immunities Clause is implicated, the classification must fall if it has the effect of retaliating against the citizens of other states who have no representation in the taxing state's legislative halls.[2] The Privileges and Immunities Clause does not preclude the states from adopting justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits, whether in the form of tax deductions or tax credits.[3] For a challenged taxing statute to be found unconstitutional pursuant to a privileges and immunities claim, it must lack a substantial reason for the discrimination, and the discrimination must lack a substantial nexus to a legitimate state purpose.[4]

Within constitutional limits, the power of a state to tax is plenary, and only emphatic requirements of the United States Constitution authorize an interpretation of the Privileges and Immunities Clause which restricts the power.[5] When the question is whether a state tax law contravenes constitutional provisions, the decision must depend not on any mere question of form, construction, or definition but on the practical operation and effect of the tax imposed.[6]

The Federal Constitution does not give to a citizen of a state the right to complain that its tax laws are more favorable to citizens of another state than to him or her,[7] and a state may tax its own citizens on income derived from sources outside the state without denying privileges and immunities.[8]

Footnotes

1 Me.—Green v. State Tax Assessor, 562 A.2d 1217 (Me. 1989).

2 U.S.—Spencer v. South Carolina Tax Com'n, 281 S.C. 492, 316 S.E.2d 386 (1984), judgment aff'd, 471 U.S. 82, 105 S. Ct. 1859, 85 L. Ed. 2d 62 (1985).

3 Colo.—Thorpe v. State, 107 P.3d 1064 (Colo. App. 2004).

4 Pa.—Wirth v. Com., 95 A.3d 822 (Pa. 2014), cert. denied, 135 S. Ct. 1405 (2015).

5 U.S.—Madden v. Commonwealth of Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940).

6 Ind.—Clark v. Lee, 273 Ind. 572, 406 N.E.2d 646 (1980).
Va.—Commonwealth v. Fleet's Ex'r, 152 Va. 353, 147 S.E. 468 (1929).
Wis.—WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).

7 N.Y.—In re Davison's Estate, 137 Misc. 852, 244 N.Y.S. 616 (Sur. Ct. 1930), aff'd, 236 A.D. 684, 258 N.Y.S. 42 (2d Dep't 1932).

8 Ala.—Weil v. State, 237 Ala. 293, 186 So. 467 (1939).
N.D.—Hardy v. State Tax Com'r, 258 N.W.2d 249 (N.D. 1977).

16B C.J.S. Constitutional Law § 1232

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

3. Taxes and Licenses

§ 1232. Exercise of taxing power—Discrimination against nonresidents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2925, 2940, 2952

The Privileges and Immunities Clause of the Federal Constitution prevents a state from enacting tax statutes discriminating against nonresidents in favor of residents of the state.

The clause of the United States Constitution which provides that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"[1] prevents a state from enacting tax statutes discriminating against nonresidents in favor of residents of the state.[2] Thus, the Federal Constitution precludes granting to residents an exemption[3] or a deduction[4] denied to nonresidents or taxing nonresidents at a higher level than residents.[5] It does not, however, entitle citizens of other states to entire immunity from taxation[6] or to preferential treatment as compared with resident citizens;[7] rather, it only protects them against discriminatory taxation.[8]

Not all differentiation between residents and nonresidents, for purposes of state taxation, constitutes discriminatory treatment in violation of the Privileges and Immunities Clause.[9] The Privileges and Immunities Clause does not mean that there is a requirement of absolute equality of taxation as regards residency;[10] and inexactitude is permissible when a state fairly attempts

to distribute the burdens and costs of government to those persons who receive its benefits.[11] Nevertheless, a substantial equality of treatment must exist.[12] "Substantial equality" of a state tax challenged under the Privileges and Immunities Clause is measured by the impact of the tax in question on nonresident and residents and does not employ a determination of each group's relative tax burdens.[13] The test of constitutionality is whether the burden has been reasonably distributed without intentional discrimination against nonresidents.[14] Inequalities that result not from hostile discrimination, but occasionally and incidentally in the application of a tax system that is not arbitrary in its classification, are not sufficient to defeat a law under the Privileges and Immunities Clause.[15]

Under the Privileges and Immunities Clause, where nonresident taxpayers are treated differently from resident taxpayers, there must be a reasonable ground for the diversity of treatment.[16] A state tax distinction that treats residents and nonresidents differently, when challenged under the Privileges and Immunities Clause, is reviewed under a substantially more rigorous standard than that applied to state tax distinctions among, for example, forms of business organizations or different trades and professions.[17]

When a state taxing statute is challenged under the Privileges and Immunities Clause, a court must analyze the distribution of the tax burden between the citizens and the noncitizens to determine whether the law disadvantages the noncitizens, and must determine whether the discrimination violates a fundamental right, and must determine whether the state's discriminatory treatment of noncitizens is constitutional.[18]

The Privileges and Immunities Clause prohibits the states from denying nonresidents a general tax exemption provided to residents though the states may limit nonresidents' deductions of business expenses and nonbusiness deductions based on the relationship between those expenses and in-state property or income.[19] Although the Privileges and Immunities Clause does not prevent states from requiring nonresidents to allocate income and deductions for tax purposes based on their in-state activities in the manner described in United States Supreme Court precedents, those precedents do not automatically guarantee that the state may disallow nonresident taxpayers every manner of nonbusiness deduction on the assumption that such amounts are inevitably allocable to the state in which the taxpayer resides.[20]

Under the Privileges and Immunities Clause, nonresidents may be required to make a ratable contribution in taxes for the support of government and that duty is one to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the state.[21]

Since corporations are not citizens within the meaning of the Federal Constitution relating to privileges and immunities of citizens,[22] a state may levy a higher tax on foreign corporations than on domestic corporations without violation thereof,[23] or it may impose certain taxes on foreign corporations while exempting domestic corporations from the same taxes.[24] However, a statute imposing a tax payable by a domestic corporation on the stock of nonresident holders only,[25] on auction sales only when carried on by nonresident auctioneers,[26] or on foreigners in their character as foreigners,[27] or one imposing a higher privilege tax on construction companies having their chief office outside the state than on those having it within the state,[28] would be unconstitutional.

The State may not restrict to residents the right to deduct debts from the property on which personal taxes are assessed,[29] or allow to residents the right to certain deductions from income taxes not allowed to nonresidents,[30] or allow to residents only certain credits against property taxes.[31]

CUMULATIVE SUPPLEMENT

Cases:

California's statutory higher fees charged to nonresident commercial fishers for fishing licenses, vessel registrations, Dungeness crab permits, and herring gill net permits than charged to resident commercial fishers did not violate Privileges and Immunities Clause; California's fee differentials charging nonresidents from nearly two to slightly less than four times what residents were charged were closely related to advancement of state's substantial interest in partially recovering 73% shortfall in revenue that residents covered with their taxes while nonresidents paid no or minimal taxes for California to manage its commercial fishing industry that benefited residents and nonresidents alike and for which nonresidents paid substantially less than amount of their proportionate share. U.S. Const. art. 4, § 2, cl. 1; Cal. Fish & Game Code §§ 713, 7852, 7881, 8280.6, 8550.5. Marilley v. Bonham, 844 F.3d 841 (9th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Art. IV, § 2, cl. 1.

2 U.S.—Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981).
Fla.—Department of Revenue v. Amrep Corp., 358 So. 2d 1343 (Fla. 1978).
Iowa—Borden v. Selden, 259 Iowa 808, 146 N.W.2d 306 (1966).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

3 U.S.—Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920).
Va.—Commonwealth v. Fleet's Ex'r, 152 Va. 353, 147 S.E. 468 (1929).

4 N.Y.—Golden v. Tully, 88 A.D.2d 1058, 452 N.Y.S.2d 748 (3d Dep't 1982), judgment aff'd, 58 N.Y.2d 1047, 462 N.Y.S.2d 626, 449 N.E.2d 406 (1983).

5 Cal.—Davis v. Franchise Tax Board, 71 Cal. App. 3d 998, 139 Cal. Rptr. 797 (3d Dist. 1977).
N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).
Wis.—WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).

6 U.S.—Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).
N.Y.—People ex rel. Stafford v. Travis, 231 N.Y. 339, 132 N.E. 109, 15 A.L.R. 1319 (1921).

7 U.S.—Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

8 U.S.—Austin v. New Hampshire, 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975).
Ind.—Clark v. Lee, 273 Ind. 572, 406 N.E.2d 646 (1980).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

9 Me.—Green v. State Tax Assessor, 562 A.2d 1217 (Me. 1989).

10 Iowa—Borden v. Selden, 259 Iowa 808, 146 N.W.2d 306 (1966).
Wis.—WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).

11 N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

12 N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).

13 N.Y.—City of New York v. State, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000).

14 N.Y.—In re Davison's Estate, 137 Misc. 852, 244 N.Y.S. 616 (Sur. Ct. 1930), aff'd, 236 A.D. 684, 258 N.Y.S. 42 (2d Dep't 1932).
Fla.—Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So. 2d 981 (Fla. 1981).
Vt.—Wheeler v. State, 127 Vt. 361, 249 A.2d 887 (1969).
Wis.—Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).

15 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
Alaska—State, Commercial Fisheries Entry Com'n v. Carlson, 191 P.3d 137 (Alaska 2008).

16 N.Y.—Igoe v. Pataki, 182 Misc. 2d 298, 696 N.Y.S.2d 355 (Sup 1999), aff'd, 265 A.D.2d 151, 696 N.Y.S.2d 426 (1st Dep't 1999), aff'd as modified on other grounds, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000).

17 N.Y.—Igoe v. Pataki, 182 Misc. 2d 298, 696 N.Y.S.2d 355 (Sup 1999), aff'd, 265 A.D.2d 151, 696 N.Y.S.2d 426 (1st Dep't 1999), aff'd as modified on other grounds, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000).

18 Wis.—Kuhnen v. Musolf, 143 Wis. 2d 134, 420 N.W.2d 401 (Ct. App. 1988).

19 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).

20 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).

21 U.S.—Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).

22 § 1204.

23 U.S.—Liverpool & London Life & Fire Ins. Co. v. State of Massachusetts, 77 U.S. 566, 19 L. Ed. 1029, 1870 WL 12839 (1870).

24 Ill.—People v. Woman's Home Missionary Soc. of M.E. Church, 303 Ill. 418, 135 N.E. 749 (1922).
Miss.—Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

25 U.S.—Union Nat. Bank v. City of Chicago, 24 F. Cas. 615, No. 14374 (C.C.N.D. Ill. 1871).
Mass.—Oliver v. Washington Mills, 93 Mass. 268, 11 Allen 268, 1865 WL 3280 (1865).

26 Ky.—Daniel v. Trustees of Richmond, 78 Ky. 542, 1 Ky. L. Rptr. 256, 1880 WL 7248 (1880).

27 Cal.—Lin Sing v. Washburn, 20 Cal. 534, 1862 WL 587 (1862).

28 U.S.—Chalker v. Birmingham & N. W. Ry. Co., 249 U.S. 522, 39 S. Ct. 366, 63 L. Ed. 748 (1919).

29 Vt.—Sprague v. Fletcher, 69 Vt. 69, 37 A. 239 (1896).

30 U.S.—Yale & Towne Mfg. Co. v. Travis, 262 F. 576 (S.D. N.Y. 1919), aff'd, 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920).
Idaho—State ex rel. Haworth v. Berntsen, 68 Idaho 539, 200 P.2d 1007 (1948).

31 Iowa—Borden v. Selden, 259 Iowa 808, 146 N.W.2d 306 (1966).

End of Document

16B C.J.S. Constitutional Law § 1233

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

3. Taxes and Licenses

§ 1233. Licenses and license taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2925, 2940, 2952

License taxes imposed on all persons engaged in a particular occupation or profession, and taxes imposed on certain privileges, do not contravene the constitutional provision relating to privileges and immunities where there is no unreasonable discrimination.

Statutes or ordinances requiring licenses from persons or individuals exercising certain privileges or engaged in certain occupations[1] or engaged in the exercise of certain professions[2] do not violate the constitutional provision protecting the privileges and immunities of citizens where no discrimination as between individuals or with respect to the origin of the merchandise sold is involved.[3] The statutory discretion conferred on a tribunal or public officials in issuing a license or permit to operate a trade or business which the State is authorized to regulate under its police power does not contravene constitutional provisions if it is reasonably exercised and does not represent merely a personal will, prejudice, or caprice.[4]

A license to manufacture and bottle soft drinks is not a privilege or immunity within the meaning of constitutional guaranties so that such license may be revoked for noncompliance with its conditions.[5] On the other hand, a statute which forbids the practice of optometry without a license, and defines "practicing optometry" as including a merchant's sale of spectacles or

eyeglasses, except by merely exhibiting them for sale, without assisting the customer or furnishing any mechanical device to aid the customer in his or her selection, has been held void as abridging a citizen's privileges and immunities.[6]

A statute which limits the issuance of a license for the sale of new motor vehicles to persons enfranchised by manufacturers is invalid as denying privileges and immunities of citizens.[7]

A license statute or ordinance which discriminates against nonresidents of a state, county, or municipality, as by requiring a license from them only, or by fixing for them a higher license tax than for residents,[8] or which imposes a license tax on persons selling certain articles of merchandise produced outside the state, but not requiring such license for persons selling articles produced within the state,[9] violates the Privileges and Immunities Clause.

A state may tax all those doing a certain business in the state even though no residents of the state are engaged in such business.[10]

Use of streets.

Since there is no inherent right to use city streets, various ordinances regulating activities on and the use of city streets have been upheld,[11] but the application of ordinances which create an unreasonable refusal of a permit denies the privileges and immunities of citizens.[12]

Statutes providing for license taxes on motor vehicles and trailers do not abridge privileges and immunities of citizens of the United States.[13] The suspension of a motor vehicle operator's license does not deny any privilege or immunity[14] since the privilege of operating a motor vehicle is one dependent on state citizenship.[15] A tax on trucks used in interstate commerce does not abridge privileges or immunities of citizens of the United States.[16] A license tax on vehicles using the streets of a city is not void for failure of the statute also to tax vehicles of nonresidents used within the state.[17]

Footnotes

1 U.S.—Finn v. Railroad Commission of State of Cal., 2 F. Supp. 891 (N.D. Cal. 1933).
Ala.—American Bakeries Co. v. City of Huntsville, 232 Ala. 612, 168 So. 880 (1936).
Cal.—People v. Mulholland, 16 Cal. 2d 62, 104 P.2d 1045 (1940).
Ga.—Standard Oil Co. of Kentucky v. State Revenue Commission, 179 Ga. 371, 176 S.E. 1 (1934).
Tenn.—Bowen v. Hannah, 167 Tenn. 451, 71 S.W.2d 672 (1934).

2 Colo.—People v. Max, 70 Colo. 100, 198 P. 150 (1921).
W. Va.—State v. Morrison, 98 W. Va. 289, 127 S.E. 75 (1925).

3 Ky.—Reuben H. Donnelley Corp. v. City of Bellevue, 283 Ky. 152, 140 S.W.2d 1024 (1940).

4 Ala.—State v. Woodall, 225 Ala. 178, 142 So. 838 (1932).
Kan.—Johnson v. Board of Com'rs of Reno County, 147 Kan. 211, 75 P.2d 849 (1938).

5 Me.—Appeal of Bornstein, 126 Me. 532, 140 A. 194 (1928).

6 Tex.—Bruhl v. State, 111 Tex. Crim. 233, 13 S.W.2d 93 (1928).

7 Neb.—Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939).

8 Ky.—Long v. City of Benton, 285 Ky. 526, 148 S.W.2d 701 (1941).
Me.—State v. Cohen, 133 Me. 293, 177 A. 403 (1935).
Nev.—Bertagnole v. Nicholson, 54 Nev. 94, 7 P.2d 597 (1932).
N.H.—Warren Kay Vantine Studio v. City of Portsmouth, 95 N.H. 171, 59 A.2d 475 (1948).
Wash.—Ralph v. City of Wenatchee, 34 Wash. 2d 638, 209 P.2d 270 (1949).

9 Fla.—Ex parte Smith, 100 Fla. 1, 128 So. 864 (1930).

10 U.S.—Singer Mfg. Co. v. Wright, 33 F. 121 (C.C.N.D. Ga. 1887).

11 Ga.—Fitts v. City of Atlanta, 121 Ga. 567, 49 S.E. 793 (1905).
Or.—Rosa v. City of Portland, 86 Or. 438, 168 P. 936 (1917).

12 U.S.—Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
Ohio—City of Cleveland v. Tussey, 27 Ohio Op. 367, 39 Ohio L. Abs. 554, 13 Ohio Supp. 11 (Mun. Ct. 1943).

13 Ind.—Eavey Co. v. Department of Treasury of Ind., 216 Ind. 255, 24 N.E.2d 268 (1939).

14 U.S.—Wall v. King, 206 F.2d 878 (1st Cir. 1953).

15 U.S.—Wall v. King, 109 F. Supp. 198 (D. Mass. 1952), judgment aff'd, 206 F.2d 878 (1st Cir. 1953).

16 Minn.—State v. Oligney, 162 Minn. 302, 202 N.W. 893 (1925).

17 Ind.—Kersey v. City of Terre Haute, 161 Ind. 471, 68 N.E. 1027 (1903).

End of Document

16B C.J.S. Constitutional Law § 1234

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

4. Preferences and Discrimination

§ 1234. Creation of preferences

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2950

A state statute giving priority to resident creditors of an insolvent over nonresident individuals is unconstitutional; but a state may give resident creditors priority over foreign corporations, or may give preference, without regard to residence, to certain classes of creditors.

In view of the Federal Constitution guaranteeing to citizens of each state the privileges and immunities of citizens in the several states, a state statute giving priority to resident creditors of an insolvent located in the state over natural persons who are citizens of other states is unconstitutional.[1] On the other hand, it has been held that the Federal Constitution is not violated by granting priority to creditors of the state attaching property of a foreign corporation within the state in the hand of a statutory liquidator where any creditor, whether resident of the state or not, was free at the time of the levy of execution to secure an attachment against the property of the corporation.[2]

The Privileges and Immunities Clause does not require states to erase any distinction between citizens and noncitizens that might conceivably give state citizens some detectable litigation advantage; rather, the constitutional requirement is satisfied if the nonresident is given access to the courts of the state upon terms which in themselves are reasonable and adequate for the

enforcing of any rights he or she may have even though they may not be technically and precisely the same in extent as those accorded to resident citizens.[3]

A statute which gives priority to resident creditors over foreign corporations does not violate the constitutional provisions.[4] A statute may be valid which gives preferences, without regard to residence, to certain classes of creditors,[5] as, for example, creditors furnishing necessaries,[6] or creditors having claims for wages.[7]

Footnotes

1 U.S.—Berger v. Kingsport Press, 89 F.2d 444 (C.C.A. 6th Cir. 1937).
S.C.—Witt v. People's State Bank of South Carolina, 166 S.C. 1, 164 S.E. 306, 83 A.L.R. 1068 (1932).
Denial of privileges and immunities to nonresidents, generally, see § 1223.

2 U.S.—Van Schaick v. Parsons, 11 F. Supp. 654 (D. Mont. 1935).
Mont.—Mieyr v. Federal Surety Co. of Davenport, Iowa, 97 Mont. 503, 34 P.2d 982 (1934), aff'd, 294 U.S. 211, 55 S. Ct. 356, 79 L. Ed. 865, 98 A.L.R. 347 (1935).

3 U.S.—McBurney v. Young, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).

4 U.S.—Berger v. Kingsport Press, 89 F.2d 444 (C.C.A. 6th Cir. 1937).

5 U.S.—Sully v. American Nat. Bank, 178 U.S. 289, 20 S. Ct. 935, 44 L. Ed. 1072 (1900).
S.C.—Witt v. People's State Bank of South Carolina, 166 S.C. 1, 164 S.E. 306, 83 A.L.R. 1068 (1932).
Wyo.—In re Riverton State Bank, 48 Wyo. 372, 49 P.2d 637 (1935).

6 S.C.—Witt v. People's State Bank of South Carolina, 166 S.C. 1, 164 S.E. 306, 83 A.L.R. 1068 (1932).

7 S.C.—Witt v. People's State Bank of South Carolina, 166 S.C. 1, 164 S.E. 306, 83 A.L.R. 1068 (1932).

16B C.J.S. Constitutional Law § 1235

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

4. Preferences and Discrimination

§ 1235. Personal discrimination

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2910 to 2916, 2920, 2922 to 2926, 2929 to 2932

Discrimination against citizens by reason of race or color violates the Federal Constitution.

The Fourteenth Amendment to the Federal Constitution which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" protects citizens from all races against discrimination by the states.[1] Accordingly, the right to vote in a primary election for the nomination of candidates without discrimination by the state because of race is a right secured by the Fourteenth Amendment.[2] State constitutional provisions guaranteeing to citizens the liberty of forming political associations have been held to violate the Federal Constitution by their failure to forbid political organizations from making racial or color qualifications for membership.[3]

The action of municipal officials restricting citizens to particular public housing projects or to a part of a particular project because of race is state action[4] and abridges privileges and immunities even though the accommodations made available are of like character and equal quality.

By reason of age.

A statutory requirement that individuals attain a certain age at the time of election in order to serve in the legislature of the state, even though they possess the right to vote at an earlier age, has been upheld as against the contention that there is an abridgment of their privileges and immunities.[5]

Alien land law.

A statutory presumption of an alien land law that any conveyance is with intent to avoid escheat, as applied to a minor son of an alien to whom property had been conveyed, has been held unconstitutional.[6]

Footnotes

1 U.S.—Nixon v. Herndon, 273 U.S. 536, 47 S. Ct. 446, 71 L. Ed. 759 (1927); Spaulding v. Blair, 291 F. Supp. 149 (D. Md. 1968), judgment aff'd, 403 F.2d 862 (4th Cir. 1968) (Discrimination not shown).
N.Y.—Salla v. Monroe County, 48 N.Y.2d 514, 423 N.Y.S.2d 878, 399 N.E.2d 909 (1979).

2 U.S.—Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, 151 A.L.R. 1110 (1944).

3 U.S.—Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, 151 A.L.R. 1110 (1944).

4 N.J.—Seawell v. MacWithey, 2 N.J. Super. 255, 63 A.2d 542 (Ch. Div. 1949), judgment aff'd in part, rev'd in part on other grounds, 2 N.J. 563, 67 A.2d 309 (1949).

5 Nev.—Mengelkamp v. List, 88 Nev. 542, 501 P.2d 1032 (1972).

6 U.S.—Oyama v. California, 332 U.S. 633, 68 S. Ct. 269, 92 L. Ed. 249 (1948).

16B C.J.S. Constitutional Law § 1236

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

4. Preferences and Discrimination

§ 1236. Remedial discrimination

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2950, 2951, 2961 to 2963

As a general rule, a state does not violate the Federal Constitution relating to privileges and immunities of citizens by regulations as to remedies or procedure in the state courts.

All matters relating to remedies or procedure in the state courts are in general within the control of the states and, subject to certain limitations as to discrimination against nonresidents,[1] are not ordinarily open to attack as abridging the privileges or immunities of citizens of the United States or of the several states.[2] Thus, it is not a privilege or immunity of a citizen of the United States or of a state to have a controversy in a state court prosecuted or defended by one form of action rather than by another.[3]

The states may enact laws prescribing the period for limitation of actions,[4] and pass statutes authorizing suit against the State,[5] requiring notice to a municipality of an injury on the streets as a condition of an action against it for such injury,[6] or validating an irregular notice given pursuant to statute.[7]

The State may permit recovery of punitive damages against employers for the negligence of their employees.[8] The sustaining of a demurrer to a pleading and the rendering of judgment for the opposing party on the pleader's refusal to plead further do not abridge privileges and immunities.[9]

When the failure of the trial court to apply a statute relating to procedure amounts only to a technical error, the privileges and immunities of the parties are not abridged.[10]

Divorce is not a privilege or immunity protected by the constitutional guaranties.[11]

A state court may, on equitable grounds, and without violating constitutional provisions, enjoin one resident of the state from maintaining an action against another resident in a foreign state.[12]

Federal statutes authorizing removal of cases from state courts to federal courts because of diversity of citizenship do not abridge privileges and immunities of citizens.[13]

Footnotes

1 § 1237.

2 U.S.—Murphy v. Com. of Massachusetts, 177 U.S. 155, 20 S. Ct. 639, 44 L. Ed. 711 (1900).
Cal.—Thome v. Macken, 58 Cal. App. 2d 76, 136 P.2d 116 (3d Dist. 1943).
Ind.—Gordon v. Corning, 174 Ind. 337, 92 N.E. 59 (1910).

3 U.S.—Iowa Cent. Ry. Co. v. State of Iowa, 160 U.S. 389, 16 S. Ct. 344, 40 L. Ed. 467 (1896).

4 Cal.—State of Ohio ex rel. Squire v. Porter, 21 Cal. 2d 45, 129 P.2d 691, 143 A.L.R. 1432 (1942).
N.Y.—Klotz v. Angle, 220 N.Y. 347, 116 N.E. 24 (1917).
Ohio—Howard v. Allen, 30 Ohio St. 2d 130, 59 Ohio Op. 2d 148, 283 N.E.2d 167 (1972) (holding modified on other grounds by, Vaccariello v. Smith & Nephew Richards, Inc., 94 Ohio St. 3d 380, 2002-Ohio-892, 763 N.E.2d 160 (2002)).
Tex.—Young v. City of Colorado, 174 S.W. 986 (Tex. Civ. App. Fort Worth 1915), writ refused, (Mar. 1, 1916).

5 Wis.—Apfelbacher v. State, 160 Wis. 565, 152 N.W. 144 (1915).

6 Ind.—Touhey v. City of Decatur, 175 Ind. 98, 93 N.E. 540 (1911).

7 Conn.—Sanger v. City of Bridgeport, 124 Conn. 183, 198 A. 746, 116 A.L.R. 1031 (1938).

8 Ala.—Supreme Lodge of the World, Loyal Order of Moose v. Gustin, 202 Ala. 246, 80 So. 84 (1918).

9 Ohio—Martin v. Trustees of Beaver Tp., 43 Ohio Op. 28, 57 Ohio L. Abs. 476, 94 N.E.2d 531 (Ct. App. 7th Dist. Mahoning County 1949).

10 U.S.—Porter v. Wilson, 239 U.S. 170, 36 S. Ct. 91, 60 L. Ed. 204 (1915).

11 Ga.—Dickson v. Dickson, 238 Ga. 672, 235 S.E.2d 479 (1977).
Ky.—Hensley v. Hensley, 286 Ky. 378, 151 S.W.2d 69 (1941).
Tenn.—Turner v. Bell, 198 Tenn. 232, 279 S.W.2d 71 (1955).

12 Minn.—State v. District Court, Hennepin County, 140 Minn. 494, 168 N.W. 589, 1 A.L.R. 145 (1918).
Mo.—Kansas City Rys. Co. v. McCardle, 288 Mo. 354, 232 S.W. 464 (1921).

13 U.S.—Kithcart v. Metropolitan Life Ins. Co., 150 F.2d 997 (C.C.A. 8th Cir. 1945).

16B C.J.S. Constitutional Law § 1237

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

C. Denial of Privileges and Immunities

4. Preferences and Discrimination

§ 1237. Remedial discrimination—Against nonresidents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2950, 2951, 2961 to 2963

While a state may not deny the privilege of suing in its courts to citizens of other states, it may decline to take jurisdiction of actions by nonresidents when a more appropriate forum is available to them, may make different regulations for residents and nonresidents with respect to procedure, and may deny the use of its courts to aliens.

The provision of the Federal Constitution entitling the citizens of each state to all privileges and immunities of citizens in the several states[1] secures to citizens of one state substantially the same right of access to the courts of another state as is accorded to citizens of the latter state so that a denial of such right violates the Federal Constitution.[2] Thus, a statute which denies to a carrier the right to engage in interstate business except on condition that, with respect to process, it submit to the same treatment as residents is unconstitutional[3] as is a statute which discriminates between residents and nonresidents with respect to the right to arrest and hold to bail defendants in civil actions.[4]

A state may not subject a nonresident to a personal judgment in a case in which he or she has not appeared or been served with process within the state[5] although there is also authority to the contrary.[6] A state policy which permits transitory actions against

foreign corporations, regardless of where the causes arise, violates constitutional provisions unless it operates in the same way on its own citizens and those of other states.[7]

However, the constitutional guaranty under consideration was intended to prevent only arbitrary and unreasonable discrimination against citizens of foreign states.[8] Such guaranty does not entitle a nonresident to precisely the same rights in the courts of a state as resident citizens have if he or she is given access to the courts on terms which, in themselves, are reasonable and adequate for the enforcement of his or her rights.[9] A state may deny the use of its courts for the litigation between nonresidents of causes of action arising wholly in other states and not involving residents or property within the state.[10]

With respect to mere matters of procedure, it is competent for the states to prescribe different regulations as to residents of the state and nonresidents whenever such distinctions are fairly required in the due administration of justice to meet and provide for the circumstance of nonresidence.[11] This rule has been applied to such matters as limitations of actions[12] and service of process.[13] The Privileges and Immunities Clause is no basis for avoidance of a state's jurisdiction under a "long arm" statute.[14]

A state court does not deny privileges or immunities of citizens of other states by refusing to take jurisdiction of a cause arising under a foreign statute which conflicts with the law or public policy of the forum[15] or by permitting remedies in suits between nonresidents which would not be available in a foreign jurisdiction.[16]

The doctrine of forum non conveniens is not repugnant to the constitutional guaranties of privileges and immunities.[17] Accordingly, a state court may decline to assume jurisdiction of an action by a nonresident when a more appropriate forum is available to him or her,[18] and it may deny access to its courts to all nonresidents regardless of citizenship.[19] However, it may not discriminate between citizens of the state and citizens of other states.[20]

Footnotes

1 U.S. Const. Art. IV, § 2, cl. 1.

2 U.S.—McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 54 S. Ct. 690, 78 L. Ed. 1227 (1934).
Ill.—Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948).
N.J.—Charles v. Fischer Baking Co., 14 N.J. Misc. 18, 182 A. 30 (Sup. Ct. 1935), aff'd, 117 N.J.L. 115, 187 A. 175 (N.J. Ct. Err. & App. 1936).
N.C.—Whitehead v. Whitehead, 13 N.C. App. 393, 185 S.E.2d 706 (1972).

3 N.Y.—Guerin Mills v. Barrett, 254 N.Y. 380, 173 N.E. 553 (1930).

4 N.C.—Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933).

5 U.S.—Moredock v. Kirby, 118 F. 180 (C.C.W.D. Ky. 1902).
Del.—Caldwell v. Armour, 17 Del. 545, 1 Penne. 545, 43 A. 517 (Super. Ct. 1899).

6 Ky.—Guenther v. American Steel Hoop Co., 116 Ky. 580, 25 Ky. L. Rptr. 795, 76 S.W. 419 (1903).

7 Minn.—Erving v. Chicago & N.W. Ry. Co., 171 Minn. 87, 214 N.W. 12 (1927).

8 U.S.—Richter v. East St. Louis & S. Ry. Co., 20 F.2d 220 (E.D. Mo. 1927).
Ohio—Loftus v. Pennsylvania R. Co., 107 Ohio St. 352, 1 Ohio L. Abs. 310, 140 N.E. 94 (1923).

9 U.S.—Canadian Northern Ry. Co. v. Eggen, 252 U.S. 553, 40 S. Ct. 402, 64 L. Ed. 713 (1920).
U.S.—Duehay v. Acacia Mut. Life Ins. Co., 105 F.2d 768, 124 A.L.R. 1268 (App. D.C. 1939).

10 U.S.—Anglo-American Provision Co. v. Davis Provision Co., 191 U.S. 373, 24 S. Ct. 92, 48 L. Ed. 225 (1903).
Ark.—Grovey v. Washington Nat. Ins. Co., 196 Ark. 697, 119 S.W.2d 503 (1938).
Mass.—Arizona Commercial Mining Co. v. Iron Cap Copper Co., 236 Mass. 185, 128 N.E. 4 (1920).

11 Ga.—Gorrell v. Fowler, 248 Ga. 801, 286 S.E.2d 13 (1982).

Minn.—Schindele v. Ulrich, 268 N.W.2d 547 (Minn. 1978).

12 U.S.—Canadian Northern Ry. Co. v. Eggen, 252 U.S. 553, 40 S. Ct. 402, 64 L. Ed. 713 (1920).
Ky.—Vassill's Adm'r v. Scarsella, 292 Ky. 153, 166 S.W.2d 64 (1942).
Pa.—Commonwealth v. Wilcox, 56 Pa. Super. 244, 1914 WL 4647 (1914).
Wis.—Bode v. Flynn, 213 Wis. 509, 252 N.W. 284, 94 A.L.R. 480 (1934).

13 U.S.—Henry L. Doherty & Co. v. Goodman, 294 U.S. 623, 55 S. Ct. 553, 79 L. Ed. 1097 (1935); Jacobson v. Schuman, 105 F. Supp. 483 (D. Vt. 1952).
Ark.—Gillioz v. Kincannon, 213 Ark. 1010, 214 S.W.2d 212 (1948).
Fla.—State ex rel. Weber v. Register, 67 So. 2d 619 (Fla. 1953).
Ill.—Brauer Machine & Supply Co., for Use of Bituminous Cas. Corp. v. Parkhill Truck Co., 383 Ill. 569, 50 N.E.2d 836, 148 A.L.R. 1208 (1943).
Iowa—Davidson v. Henry L. Doherty & Co., 214 Iowa 739, 241 N.W. 700, 91 A.L.R. 1308 (1932).
Ky.—Diggs v. Universal Underwriters, 295 Ky. 583, 175 S.W.2d 24 (1943).
Miss.—Condon v. Snipes, 205 Miss. 306, 38 So. 2d 752 (1949).
N.J.—Yarborough v. Slocum, 129 N.J.L. 540, 20 N.J. Misc. 321, 30 A.2d 431 (Sup. Ct. 1943).
N.Y.—Interchemical Corp. v. Mirabelli, 269 A.D. 224, 54 N.Y.S.2d 522 (1st Dep't 1945).
Pa.—Quinn v. Pershing, 367 Pa. 426, 80 A.2d 712 (1951).
Utah—Wein v. Crockett, 113 Utah 301, 195 P.2d 222 (1948).

14 Conn.—Weil v. Beresth, 26 Conn. Supp. 428, 225 A.2d 826 (Super. Ct. 1966).

15 U.S.—Muir v. Kessinger, 35 F. Supp. 116 (E.D. Wash. 1940).
Cal.—Thome v. Macken, 58 Cal. App. 2d 76, 136 P.2d 116 (3d Dist. 1943).

16 N.Y.—Gantt v. Felipe Y. Carlos Hurtado & CIA, 297 N.Y. 433, 79 N.E.2d 815 (1948).

17 U.S.—Adkins v. Underwood, 520 F.2d 890 (7th Cir. 1975).
Ill.—Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948).
Tex.—Owens Corning v. Carter, 997 S.W.2d 560 (Tex. 1999).

18 N.J.—Gore v. U. S. Steel Corp., 15 N.J. 301, 104 A.2d 670, 48 A.L.R.2d 841 (1954).

19 Cal.—Price v. Atchison, T. & S. F. Ry. Co., 42 Cal. 2d 577, 268 P.2d 457, 43 A.L.R.2d 756 (1954).
Okla.—St. Louis-San Francisco Ry. Co. v. Superior Court, Creek County, 1954 OK 223, 276 P.2d 773 (Okla. 1954), opinion supplemented, 1955 OK 111, 290 P.2d 118 (Okla. 1955).
Utah—Mooney v. Denver & R.G.W.R. Co., 118 Utah 307, 221 P.2d 628 (1950).

20 U.S.—State of Mo ex rel Atchison, T & S F Ry Co v. Murphy, 342 U.S. 871, 72 S. Ct. 107, 96 L. Ed. 655 (1951).
Cal.—Leet v. Union Pac. R. Co., 25 Cal. 2d 605, 155 P.2d 42, 158 A.L.R. 1008 (1944).
Okla.—St. Louis-San Francisco Ry. Co. v. Superior Court, Creek County, 1954 OK 223, 276 P.2d 773 (Okla. 1954), opinion supplemented, 1955 OK 111, 290 P.2d 118 (Okla. 1955).

End of Document

16B C.J.S. Constitutional Law VI XV D Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

End of Document

16B C.J.S. Constitutional Law § 1238

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

1. In General

§ 1238. General class legislation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

Under the Privileges and Immunities Clause of the Fourteenth Amendment of the United States Constitution and under state constitutional provisions prohibiting the enactment of laws granting special or exclusive privileges, immunities, or franchises, statutes which unreasonably and arbitrarily discriminate between persons or things are invalid; but such constitutional provisions do not prohibit reasonable classifications of persons and things for legislative purposes.

"Class legislation," often called local or private legislation, consists, broadly speaking, of those laws which are limited in their operation to certain persons or classes of persons, natural or artificial, or to certain districts of the territory of the state.[1] Such legislation is of two kinds, namely, that in which the classification is natural and reasonable, and that in which the classification is arbitrary and capricious.[2] In a narrower sense, as implying legislation obnoxious to the constitution, the term "class legislation" is that which makes improper discrimination by conferring privileges on a class arbitrarily selected from a large number of persons standing in the same relation to the privileges, without reasonable distinction or substantial difference.[3]

Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.[4] The Constitution does not forbid classifications but simply keeps governmental decision makers from

treating differently persons who are in all relevant respects alike.[5] The provision of the Fourteenth Amendment to the Federal Constitution declaring that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws, as well as provisions commonly found in state constitutions prohibiting the enactment of laws granting any special or exclusive privileges, immunities, or franchises, render void all state statutes which make any unreasonable or arbitrary discrimination between different persons or classes of persons.[6] Thus, class legislation is invalid where the classification is arbitrary and unreasonable.[7]

Neither the Fourteenth Amendment Privileges and Immunities Clause nor the provisions of the state constitutions prohibiting the granting of special privileges affect the validity of state statutes making reasonable classifications of persons or things for the various purposes of legislation.[8] The legislature has the power to classify,[9] and a statute which makes classifications which are reasonable and not arbitrary is valid.[10] It is not unconstitutional for the state to treat different classes of people in varying ways;[11] discrimination does violence to the constitution only when the basis of the discrimination is unreasonable.[12] It is competent for the legislature to subclassify a classified subject provided both the classification and the subclassification are reasonable.[13]

There is no general rule by which to distinguish reasonable and lawful from unreasonable and arbitrary classification,[14] and the question is a practical one, dependent on experience, and varying with the facts in each case.[15] The constitutional requirement that a law be general does not imply that it must be uniform in its operation and effect in the full sense of its terms; if it operates alike on all persons and property similarly situated, it is not subject to the objection of special legislation or class legislation.[16]

The fact that a legislative classification is underinclusive will not render it unconstitutionally arbitrary because the legislature is free to choose to remedy only part of a problem.[17]

Footnotes

1 Miss.—Vardaman v. McBee, 198 Miss. 251, 21 So. 2d 661 (1945).
Okla.—Wells v. Childers, 1945 OK 216, 196 Okla. 336, 163 P.2d 1015 (1945).
Wash.—State v. McFarland, 60 Wash. 98, 110 P. 792 (1910).

2 Tenn.—State ex rel. Astor v. Schlitz Brewing Co., 104 Tenn. 715, 59 S.W. 1033 (1900).

3 U.S.—Pfeiffer Brewing Co. v. Bowles, 146 F.2d 1006 (Emer. Ct. App. 1945).
Ky.—Elrod v. Willis, 305 Ky. 225, 203 S.W.2d 18 (1947).
Minn.—State v. International Harvester Co., 241 Minn. 367, 63 N.W.2d 547 (1954).
N.Y.—People v. Marcello, 25 N.Y.S.2d 533 (Magis. Ct. 1941).
Or.—Foeller v. Housing Authority of Portland, 198 Or. 205, 256 P.2d 752 (1953).

4 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

5 U.S.—Nichols v. Harris, 17 F. Supp. 3d 989 (C.D. Cal. 2014).

6 U.S.—In re Chicago, R.I. & P. Ry. Co., 90 F.2d 312, 113 A.L.R. 487 (C.C.A. 7th Cir. 1937).
Ala.—Garrett v. Colbert County Bd. of Educ., 255 Ala. 86, 50 So. 2d 275 (1950).
Minn.—Thomas v. Housing and Redevelopment Authority of Duluth, 234 Minn. 221, 48 N.W.2d 175 (1951).
N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).
N.Y.—Haynes v. Brennan, 16 Misc. 2d 13, 135 N.Y.S.2d 900 (Sup 1954).
N.D.—Northern Pac. Ry. Co. v. Warner, 77 N.D. 721, 45 N.W.2d 196 (1950).
As to prohibitions against exclusive privileges, immunities, or franchises, see §§ 1208 to 1222.
Equal protection of the laws as infringed by legislative classification, generally, see § 1269.

7 Iowa—John R. Grubb, Inc. v. Iowa Housing Finance Authority, 255 N.W.2d 89 (Iowa 1977).
Ky.—Board of Ed. of Jefferson County v. Board of Ed. of Louisville, 472 S.W.2d 496 (Ky. 1971).
Neb.—State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

N.J.—Raybestos-Manhattan, Inc. v. Glaser, 144 N.J. Super. 152, 365 A.2d 1 (Ch. Div. 1976), judgment aff'd, 156 N.J. Super. 513, 384 A.2d 176 (App. Div. 1978).

8 U.S.—Hawaii Brewing Corp. v. Bowles, 148 F.2d 846 (Emer. Ct. App. 1945).
Cal.—In re Gary W., 5 Cal. 3d 296, 96 Cal. Rptr. 1, 486 P.2d 1201 (1971).
Ind.—Hicks v. State, 249 Ind. 24, 230 N.E.2d 757 (1967).
Mont.—Rohlfs v. Klemenhagen, LLC, 2009 MT 440, 354 Mont. 133, 227 P.3d 42 (2009).

9 U.S.—Harlow v. Ryland, 78 F. Supp. 488 (E.D. Ark. 1948), judgment aff'd, 172 F.2d 784 (8th Cir. 1949).
Cal.—Elbert, Limited, v. Nolan, 87 Cal. App. 2d 24, 196 P.2d 88 (2d Dist. 1948).
Ill.—Rincon v. License Appeal Commission of City of Chicago, 62 Ill. App. 3d 600, 19 Ill. Dec. 406, 378 N.E.2d 1281, 100 A.L.R.3d 840 (1st Dist. 1978).
Iowa—State v. Abodeely, 179 N.W.2d 347 (Iowa 1970).
Neb.—City of Scottsbluff v. Tiemann, 185 Neb. 256, 175 N.W.2d 74 (1970).
Utah—Wallberg v. Utah Public Welfare Commission, 115 Utah 242, 203 P.2d 935 (1949).

Cannot be arbitrary or unreasonable

Ala.—Sellers v. Edwards, 289 Ala. 2, 265 So. 2d 438 (1972).
Ky.—Elrod v. Willis, 305 Ky. 225, 203 S.W.2d 18 (1947).

10 Fla.—T.M. v. State, 689 So. 2d 443 (Fla. 3d DCA 1997).
Iowa—Iowa Dept. of Transp. v. Iowa Dist. Court for Pottawattamie County, 592 N.W.2d 41 (Iowa 1999).
Tenn.—City of Watauga v. City of Johnson City, 589 S.W.2d 901 (Tenn. 1979).
Tex.—Inman v. Railroad Commission, 478 S.W.2d 124 (Tex. Civ. App. Austin 1972), writ refused n.r.e., (July 19, 1972).
Wash.—Aetna Life Ins. Co. v. Washington Life and Disability Ins. Guaranty Ass'n, 83 Wash. 2d 523, 520 P.2d 162 (1974).

11 Ariz.—Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 637 P.2d 1053 (1981).

12 Ill.—People v. Palkes, 52 Ill. 2d 472, 288 N.E.2d 469 (1972).
Ky.—Lee v. Com., 565 S.W.2d 634 (Ky. Ct. App. 1978).
N.M.—Board of Trustees of Town of Las Vegas v. Montano, 1971-NMSC-025, 82 N.M. 340, 481 P.2d 702 (1971).
Tenn.—City of Chattanooga v. Harris, 223 Tenn. 51, 442 S.W.2d 602 (1969).
Wis.—Wisconsin Solid Waste Recycling Authority v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648 (1975).

13 Cal.—Clark v. City of San Pablo, 270 Cal. App. 2d 121, 75 Cal. Rptr. 726 (1st Dist. 1969).
Or.—Huckaba v. Johnson, 281 Or. 23, 573 P.2d 305 (1978).
Wis.—State ex rel. Strykowski v. Wilkie, 81 Wis. 2d 491, 261 N.W.2d 434 (1978).

14 Ky.—Board of Ed. of Jefferson County v. Board of Ed. of Louisville, 472 S.W.2d 496 (Ky. 1971).
N.J.—Jamouneau v. Harner, 16 N.J. 500, 109 A.2d 640 (1954).
N.M.—State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943).
Ohio—State ex rel. Morris v. City of East Cleveland, 22 Ohio N.P. (n.s.) 549, 31 Ohio Dec. 197, 1920 WL 583 (C.P. 1920).

15 Ky.—Board of Ed. of Jefferson County v. Board of Ed. of Louisville, 472 S.W.2d 496 (Ky. 1971).
N.D.—Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974).
Pa.—Pennsylvania Public Utility Commission v. Stiely, 429 Pa. 614, 241 A.2d 74 (1968).
Tenn.—Estrin v. Moss, 221 Tenn. 657, 430 S.W.2d 345 (1968).

16 W. Va.—Gallant v. County Com'n of Jefferson County, 212 W. Va. 612, 575 S.E.2d 222 (2002).

17 Ky.—Holbrook v. Lexmark Intern. ¥Group, Inc., 65 S.W.3d 908 (Ky. 2001), as modified on denial of reh'g, (Feb. 21, 2002).
N.D.—Baldock v. North Dakota Workers Compensation Bureau, 554 N.W.2d 441 (N.D. 1996).

End of Document

16B C.J.S. Constitutional Law § 1239

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

1. In General

§ 1239. Rational basis standard for class legislation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

Under Privileges and Immunities Clauses, the courts will uphold a statutory classification where it has a rational basis; and if the legislature has power to deal with the subject matter of the classification and there is a reasonable ground therefor, it is valid even though different rights or burdens are imposed on the several classes.

A statute may result in different treatment for different classifications of people without offending the equal privileges and immunities clause of the state constitution if both (a) the disparately treated classifications are rationally distinguished by distinctive, inherent characteristics, and (b) such disparate treatment is reasonably related to such distinguishing characteristics.[1]

In order to be valid, a statutory classification must reasonably promote some proper object of public welfare or interest[2] and must rest on real and substantial differences,[3] having a natural, reasonable, and substantial relation to the subject of the legislation;[4] or, stated differently, it must have some reasonable basis.[5] A classification must affect alike all persons or things within a particular class or which are similarly situated.[6]

If the legislature has the power to deal with the subject matter of a classification,[7] there is a reasonable ground for the classification, and the law operates equally on all within the same class,[8] such classification is valid. This is so even though the act confers different rights or imposes different burdens on the several classes[9] or fails to provide for future contingencies[10] or although particular persons find it difficult or even impossible to comply with conditions precedent on which the enjoyment of the privilege is made to depend.[11] A statute making no classification of the persons or property to which it applies is not void merely because there is room for a reasonable classification of such subjects.[12] It is not necessary for the statute to show on its face the reason for the classification adopted.[13]

The fact that similar statutes have been adopted and sustained in other states is indicative of reasonable classification.[14] Similarly, the fact that a classification is long unchallenged indicates its reasonableness.[15] In determining whether or not a basis of classification is reasonable, it must be looked at from the standpoint of the legislature enacting it,[16] and with reference to the conditions existing when the statute was enacted, not when the constitution was adopted.[17] The question of classification is one primarily for the legislature, and in the exercise of this power the legislature possesses a wide discretion.[18]

Where the statutory classification being challenged neither implicates a fundamental right nor a suspect or quasi-suspect class, the appropriate level of scrutiny is whether the statutory classification is rationally related to a legitimate state interest.[19] A statute will be sustained where the basis for classification made by it could have seemed reasonable to the legislature even though such basis seems to the courts to be unreasonable.[20] Lawmakers' discretion in defining a class to which a law applies should be disturbed only when the created class is clearly arbitrary, unreasonable, and unjust.[21]

CUMULATIVE SUPPLEMENT

Cases:

Reasonable ground test for evaluating a privilege or immunity under the state constitution is more exacting than equal-protection rational basis review, as under the reasonable ground test, a court will not hypothesize facts to justify a legislative distinction; rather, the court will scrutinize the legislative distinction to determine whether it in fact serves the legislature's stated goal. U.S. Const. Amend. 14; Wash. Const. art. 1, § 12. Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 475 P.3d 164 (Wash. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—League of Women Voters of Indiana, Inc. v. Rokita, 929 N.E.2d 758 (Ind. 2010).

2 Alaska—Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975).
Neb.—Aschenbrenner v. Nebraska Public Power Dist., 206 Neb. 157, 291 N.W.2d 720 (1980).
N.H.—Allen v. Manchester, 99 N.H. 388, 111 A.2d 817 (1955).
Ohio—Graley v. Satayatham, 74 Ohio Op. 2d 316, 343 N.E.2d 832 (C.P. 1976).
Wis.—State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780 (1973).

3 Ga.—Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384 (1967).
Ind.—Chaffin v. Nicosia, 261 Ind. 698, 310 N.E.2d 867 (1974).
Ky.—Board of Ed. of Louisville v. Board of Ed. of Jefferson County, 522 S.W.2d 854 (Ky. 1975).
Neb.—State ex rel. Douglas v. Marsh, 207 Neb. 598, 300 N.W.2d 181 (1980).
S.C.—State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980).

Wyo.—Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351 (Wyo. 1978).

4 U.S.—In re Levenson, 587 F.3d 925 (9th Cir. 2009).
Ala.—Plant v. R. L. Reid, Inc., 294 Ala. 155, 313 So. 2d 518 (1975).
Ark.—Wometco Services, Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).
Neb.—State ex rel. Meyer v. McNeil, 185 Neb. 586, 177 N.W.2d 596 (1970).
Pa.—Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224 (1974).
Utah—Baker v. Matheson, 607 P.2d 233 (Utah 1979).

5 Neb.—State ex rel. Douglas v. Marsh, 207 Neb. 598, 300 N.W.2d 181 (1980).
Or.—Hoffman v. Highway Division of Dept. of Transp., 23 Or. App. 497, 543 P.2d 50 (1975).
Wash.—Ballot Title for Initiative 333 v. Gorton, 88 Wash. 2d 192, 558 P.2d 248 (1977).

6 Ariz.—Garcia v. Arizona State Liquor Bd., 21 Ariz. App. 456, 520 P.2d 852 (Div. 1 1974).
Ga.—Blackmon v. Monroe, 233 Ga. 656, 212 S.E.2d 827 (1975).
Ill.—Schilb v. Kuebel, 46 Ill. 2d 538, 264 N.E.2d 377 (1970), judgment aff'd, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).
Ind.—Person v. State, 661 N.E.2d 587 (Ind. Ct. App. 1996).
Mont.—Great Falls Nat. Bank v. McCormick, 152 Mont. 319, 448 P.2d 991 (1968).
N.D.—Dunn v. North Dakota Workmen's Compensation Bureau, 191 N.W.2d 181 (N.D. 1971).

7 Mich.—In re Brewster Street Housing Site in City of Detroit, 291 Mich. 313, 289 N.W. 493 (1939).
Minn.—Thomas v. Housing and Redevelopment Authority of Duluth, 234 Minn. 221, 48 N.W.2d 175 (1951).
Wash.—Campbell v. State, 12 Wash. 2d 459, 122 P.2d 458 (1942).

8 U.S.—Hawaii Brewing Corp. v. Bowles, 148 F.2d 846 (Emer. Ct. App. 1945).
Ariz.—Schrey v. Allison Steel Mfg. Co., 75 Ariz. 282, 255 P.2d 604 (1953).
Ark.—Thompson v. Continental Southern Lines, 222 Ark. 108, 257 S.W.2d 375 (1953).
Ill.—Youngquist v. City of Chicago, 405 Ill. 21, 90 N.E.2d 205 (1950).
Iowa—Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951).

9 Iowa—John R. Grubb, Inc. v. Iowa Housing Finance Authority, 255 N.W.2d 89 (Iowa 1977).
N.M.—State v. Thompson, 1953-NMSC-072, 57 N.M. 459, 260 P.2d 370 (1953).
Utah—Abrahamsen v. Board of Review of the Indus. Commission of Utah, 3 Utah 2d 289, 283 P.2d 213 (1955).

10 Mo.—City of Springfield v. Stevens, 358 Mo. 699, 216 S.W.2d 450 (1949).
Tex.—Watts v. Mann, 187 S.W.2d 917 (Tex. Civ. App. Austin 1945), writ refused.
Va.—Quesinberry v. Hull, 159 Va. 270, 165 S.E. 382 (1932).

11 U.S.—Gant v. Oklahoma City, 289 U.S. 98, 53 S. Ct. 530, 77 L. Ed. 1058 (1933).
Okla.—Courter Oil Co. v. Oklahoma City, 1934 OK 209, 167 Okla. 633, 31 P.2d 596 (1934).

12 Mo.—Household Finance Corp. v. Shaffner, 356 Mo. 808, 203 S.W.2d 734 (1947).
Wis.—Borgnis v. Falk Co., 147 Wis. 327, 133 N.W. 209 (1911).

13 Ind.—Podgor v. Indiana University, 178 Ind. App. 245, 381 N.E.2d 1274 (1978).
Ky.—Meredith v. Ray, 292 Ky. 326, 166 S.W.2d 437 (1942).
Miss.—Stone v. General Electric Contracts Corporation, 193 Miss. 317, 7 So. 2d 811 (1942).
N.D.—Baird v. Rask, 60 N.D. 432, 234 N.W. 651 (1931).

14 Tex.—Sportatorium, Inc. v. State, 115 S.W.2d 483 (Tex. Civ. App. Dallas 1938), dismissed.

15 Ill.—Krebs v. Board of Trustees of Teachers' Retirement System, 410 Ill. 435, 102 N.E.2d 321, 27 A.L.R.2d 1434 (1951).

16 N.D.—Baird v. Rask, 60 N.D. 432, 234 N.W. 651 (1931).
Tex.—Gerard v. Smith, 52 S.W.2d 347 (Tex. Civ. App. El Paso 1932), writ refused, (Dec. 22, 1932).

17 Iowa—Anderson v. Jester, 206 Iowa 452, 221 N.W. 354 (1928).

18 Fla.—Lewis v. Mathis, 345 So. 2d 1066 (Fla. 1977).
Mo.—Mid-State Distributing Co. v. City of Columbia, 617 S.W.2d 419 (Mo. Ct. App. W.D. 1981).
Mont.—Great Falls Nat. Bank v. McCormick, 152 Mont. 319, 448 P.2d 991 (1968).
N.J.—Parking Authority of City of Atlantic City v. Board of Chosen Freeholders of Atlantic County, 180 N.J. Super. 282, 434 A.2d 676 (Law Div. 1981).
N.D.—Newman Signs, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978).

Wash.—Yakima County Deputy Sheriff's Ass'n v. Board of Com'rs for Yakima County, 92 Wash. 2d 831, 601 P.2d 936 (1979).

19 Ill.—Jahn v. Troy Fire Protection Dist., 255 Ill. App. 3d 933, 194 Ill. Dec. 574, 627 N.E.2d 1216 (3d Dist. 1994), judgment aff'd, 163 Ill. 2d 275, 206 Ill. Dec. 106, 644 N.E.2d 1159 (1994).

20 Minn.—State v. International Harvester Co., 241 Minn. 367, 63 N.W.2d 547 (1954).

N.D.—Baird v. Rask, 60 N.D. 432, 234 N.W. 651 (1931).

Pa.—Commonwealth v. Plymouth Coal Co., 43 Pa. C.C. 365, 1915 WL 3395 (Pa. C.P. 1915).

21 Mo.—City of Sullivan v. Sites, 329 S.W.3d 691 (Mo. 2010).

End of Document

16B C.J.S. Constitutional Law § 1240

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

1. In General

§ 1240. Nuisances as class legislation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2989

Nuisance regulations which are based on reasonable classifications and which do not arbitrarily discriminate between persons engaged in the same business are valid.

Laws relating to nuisances are not invalid as class legislation if they are based on a reasonable classification and do not arbitrarily discriminate between persons engaged in the same business under like conditions.[1]

An ordinance making the emission of dense smoke unlawful is not invalid because it does not regulate the discharge of deleterious gases.[2]

Footnotes

1 Cal.—People v. International Steel Corp., 102 Cal. App. 2d Supp. 935, 226 P.2d 587 (App. Dep't Super. Ct. 1951).

Mo.—Ballentine v. Nester, 350 Mo. 58, 164 S.W.2d 378 (1942).
N.C.—Lawrence v. Nissen, 173 N.C. 359, 91 S.E. 1036 (1917).

2 Mo.—Ballentine v. Nester, 350 Mo. 58, 164 S.W.2d 378 (1942).

End of Document

16B C.J.S. Constitutional Law § 1241

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

1. In General

§ 1241. Crimes and criminal procedure

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

Laws making the commission of certain acts criminal, regulating the procedure in prosecutions therefor, and prescribing the punishment, are not invalid as class legislation if they operate alike on all of the described class; but they are invalid if they make arbitrary distinctions between different persons or classes of persons.

Laws which denounce certain acts as crimes, regulate the procedure in prosecutions therefor, and prescribe the punishment to be inflicted can be declared void only when the classification is based on purely arbitrary grounds; if they operate uniformly on all persons in the same category and there is a reasonable basis for any classification that is made, they are not invalid as class legislation.[1]

A penal statute, however, which makes arbitrary distinctions,[2] such as arbitrary distinctions between different persons or classes of persons, either by making certain acts criminal offenses when committed by some persons but not when committed by others,[3] by prescribing different penalties for the commission of the same acts by different persons,[4] or by imposing a more severe penalty for assault on a person engaged in the movement of commerce than for assault on other classes of persons,[5] has been declared unconstitutional as class legislation.

A statute is not invalid as class legislation because it prescribes rules of procedure to be applied to certain classes of cases but not to others.[6] The legislature may provide that certain rules of evidence shall apply in particular classes of cases,[7] and a provision that prison records or copies thereof may be introduced to establish prima facie proof of a prior conviction of accused has been held valid, as applying equally to all persons in the same situation.[8]

Footnotes

1 Ind.—Dowd v. Stuckey, 222 Ind. 100, 51 N.E.2d 947 (1943).
N.J.—State v. Wyckoff, 27 N.J. Super. 322, 99 A.2d 365 (App. Div. 1953).
Wash.—State v. Krantz, 24 Wash. 2d 350, 164 P.2d 453 (1945).
Wis.—Ed. Schuster & Co. v. Steffes, 237 Wis. 41, 295 N.W. 737, 133 A.L.R. 1071 (1941).

2 U.S.—U.S. v. Schneider, 45 F. Supp. 848 (E.D. Wis. 1942).
Mo.—Lige v. Chicago, B. & Q.R. Co., 275 Mo. 249, 204 S.W. 508 (1918).

3 U.S.—Peonage Cases, 123 F. 671 (M.D. Ala. 1903).

4 Colo.—Chenoweth v. State Bd. of Medical Examiners, 57 Colo. 74, 141 P. 132 (1913).
Idaho—Ex parte Mallon, 16 Idaho 737, 102 P. 374 (1909).

5 Tex.—Ratcliff v. State, 106 Tex. Crim. 37, 289 S.W. 1072 (1926).

6 Wash.—State v. Costello, 161 Wash. 674, 297 P. 790 (1931).

7 Ga.—Smith v. State, 141 Ga. 482, 81 S.E. 220 (1914).
Mo.—State v. Tower, 185 Mo. 79, 84 S.W. 10 (1904).

8 Cal.—People v. Beatty, 132 Cal. App. 376, 22 P.2d 757 (2d Dist. 1933).

16B C.J.S. Constitutional Law § 1242

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1242. General purposes of classifications

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981 to 2987, 2990, 2991

While constitutional class legislation must include all who belong and exclude all who do not belong to the class, the legislature may validly limit its regulation to those situations where the need is most acute; it need not cover all evils of like character in a single act but may proceed step by step.

Peculiar circumstances which surround particular persons, corporations, or things, and which afford a justifiable reason for differentiation, are ample grounds for holding laws which discriminate for or against them valid.[1] Discrimination is not illegal where there is between the classes some natural and substantial difference germane to the subject and purposes of the legislation.[2] Thus, where experience shows evils arising from the activities of some specific group, a remedy may be provided by a statute applicable only to that group.[3] The classification will not be overthrown because it does not extend to all subjects which legitimately might be included,[4] or because it does not depend on scientific or marked differences in things and persons or in their relations,[5] or because it rests on narrow distinctions,[6] provided it is based on a practical distinction.[7]

Constitutional class legislation must include all who belong and exclude all who do not belong to the class.[8] If there are other classes situated in all respects like the class benefited by the statute, with the same inherent needs and qualities which indicate the necessity or expediency of protection for the favored class, any legislation which discriminates against, casts a burden on, or withholds the same protection from, the other class or classes in like situation, is invalid.[9]

The legislature is not required to cover all evils of a like character in a single act but may proceed step by step[10] and may validly limit its regulation to those situations where the need is most acute.[11] The legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where it deems the need to be greatest.[12] The legislature may also restrict its regulation of an evil where more extensive legislation would produce hardship.[13]

A statutory classification which exempts persons regulated by other statutes previously enacted is not unreasonable or arbitrary.[14] The law may forbid certain acts when done by members of a specified class without forbidding such acts by others where the danger from such acts is characteristic of the class named[15] or where the classification is reasonable and serves the public interest.[16] Mathematical exactness in classification is not required.[17]

The classification of the objects of legislation is not required to be scientific, logical, or consistent if it is reasonably adapted to secure the purpose for which it is intended and is not purely arbitrary.[18] The legislature is not required to trace with precision the boundaries of the class to which a statute is to apply,[19] and a statute will not be held unconstitutional because in practice it results in some inequality,[20] as where the statute is reasonable in its overall operation but is discriminatory in its application to a particular case.[21]

The regulation of a particular subject is not arbitrary and invalid because another subject of equal importance is not regulated,[22] and legislation aimed at one evil is not invalid because it does not prevent another evil.[23] An artificial presumption does not dispense with the necessity for a valid classification where the law is designed to operate unequally on the inhabitants of the state.[24] A statute creating a right available to all is not invalid because it is anticipated that only members of a certain class will avail themselves of it.[25]

It is immaterial how many or how few compose a class.[26] Thus, legislation may be made to apply to a class although the class is small[27] or consists of only one member.[28] However, the fewer in the class, the more closely the court will examine the legislation.[29]

Administrative convenience and expense are legitimate factors to be considered in determining the propriety of a classification.[30] The passage of an examination may be a legitimate basis of classification.[31] A classification based on population may be proper.[32] Where size is a proper index to an evil, the legislature may discriminate between the large and the small.[33] A law imposing the same penalty on all offenders is not invalid because the penalty hurts some offenders more than others.[34] A law is not unconstitutional because it preserves one interest at the expense of another where there is a preponderant public concern in the preservation of the one over the other.[35]

Classifications based on age which are reasonable and not arbitrary are not invalid[36] as in the case of statutes passed for the purpose of safeguarding the habits and morals of persons who are minors.[37]

Footnotes

1 U.S.—Toomer v. Witsell, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).
Ariz.—Vong v. Aune, 235 Ariz. 116, 328 P.3d 1057 (Ct. App. Div. 1 2014), review denied, (Nov. 6, 2014) and cert. denied, 2015 WL 504947 (U.S. 2015).
Cal.—Los Angeles County v. Southern Cal. Tel. Co., 32 Cal. 2d 378, 196 P.2d 773 (1948).
Ill.—McDougall v. Lueder, 389 Ill. 141, 58 N.E.2d 899, 156 A.L.R. 1059 (1945).
Minn.—Cleveland v. Rice County, 238 Minn. 180, 56 N.W.2d 641 (1952).
Wyo.—Ludwig v. Harston, 65 Wyo. 134, 197 P.2d 252 (1948).

2 Conn.—Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A.2d 177, 156 A.L.R. 568 (1944).
N.Y.—Isensee v. Long Island Motion Picture Co., 184 Misc. 625, 54 N.Y.S.2d 556 (Sup 1945).
Or.—M & M Wood Working Co. v. State Indus. Acc. Com'n, 176 Or. 35, 155 P.2d 933 (1945).

3 U.S.—West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937).
Ill.—Gadlin v. Auditor of Public Accounts, 414 Ill. 89, 110 N.E.2d 234 (1953).
Mo.—City of Springfield v. Stevens, 358 Mo. 699, 216 S.W.2d 450 (1949).

4 Cal.—Sacramento Municipal Utility Dist. v. Pacific Gas & Elec. Co., 20 Cal. 2d 684, 128 P.2d 529 (1942).
Minn.—Fairview Hospital Ass'n v. Public Bldg. Service and Hospital and Institutional Emp. Union Local No. 113 A. F. L., 241 Minn. 523, 64 N.W.2d 16 (1954).
N.H.—Chronicle & Gazette Pub. Co. v. Attorney General, 94 N.H. 148, 48 A.2d 478, 168 A.L.R. 879 (1946).
Pa.—Maurer v. Boardman, 336 Pa. 17, 7 A.2d 466 (1939), judgment aff'd, 309 U.S. 598, 60 S. Ct. 726, 84 L. Ed. 969, 135 A.L.R. 1347 (1940).
Wis.—State v. Seraphine, 266 Wis. 118, 62 N.W.2d 403 (1954).

5 U.S.—Toomer v. Witsell, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).
Mass.—Zayre Corp. v. Attorney General, 372 Mass. 423, 362 N.E.2d 878 (1977).
N.J.—Jamouneau v. Harner, 16 N.J. 500, 109 A.2d 640 (1954).
R.I.—State v. Conragan, 58 R.I. 313, 192 A. 752 (1937).

6 Nev.—Mengelkamp v. List, 88 Nev. 542, 501 P.2d 1032 (1972).
Wash.—Pacific Coast Adjustment Co. v. Reese, 189 Wash. 347, 65 P.2d 1057 (1937).

7 Iowa—State v. McGuire, 183 Iowa 927, 167 N.W. 592 (1918).
N.J.—Jamouneau v. Harner, 16 N.J. 500, 109 A.2d 640 (1954).
Tenn.—City of Memphis v. State, 133 Tenn. 83, 179 S.W. 631 (1915).

8 U.S.—Pfeiffer Brewing Co. v. Bowles, 146 F.2d 1006 (Emer. Ct. App. 1945).
Mo.—Heil v. Kauffman, 354 Mo. 271, 189 S.W.2d 276 (1945).
N.D.—Lindberg v. Benson, 70 N.W.2d 42 (N.D. 1955).

9 Ind.—McErlain v. Taylor, 207 Ind. 240, 192 N.E. 260, 94 A.L.R. 1284 (1934).

10 Ala.—Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810 (1944).
Colo.—Bushnell v. Sapp, 194 Colo. 273, 571 P.2d 1100 (1977).
Mo.—Ballentine v. Nester, 350 Mo. 58, 164 S.W.2d 378 (1942).
Pa.—Maurer v. Boardman, 336 Pa. 17, 7 A.2d 466 (1939), judgment aff'd, 309 U.S. 598, 60 S. Ct. 726, 84 L. Ed. 969, 135 A.L.R. 1347 (1940).

11 Cal.—People v. International Steel Corp., 102 Cal. App. 2d Supp. 935, 226 P.2d 587 (App. Dep't Super. Ct. 1951).
Ill.—Union Cemetery Ass'n of City of Lincoln v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).
Minn.—George Benz Sons Inc. v. Ericson, 227 Minn. 1, 34 N.W.2d 725 (1948).
N.J.—Outdoor Sports Corp. v. American Federation of Labor, Local 23132, 6 N.J. 217, 78 A.2d 69, 29 A.L.R.2d 313 (1951).
Pa.—Iben v. Borough of Monaca, 158 Pa. Super. 46, 43 A.2d 425 (1945).
Tex.—Watts v. Mann, 187 S.W.2d 917 (Tex. Civ. App. Austin 1945), writ refused.

12 U.S.—Miller v. Wilson, 236 U.S. 373, 35 S. Ct. 342, 59 L. Ed. 628 (1915).
Minn.—Eldred v. Division of Employment and Sec., Dept. of Social Sec., 209 Minn. 58, 295 N.W. 412 (1940).
Mo.—Ballentine v. Nester, 350 Mo. 58, 164 S.W.2d 378 (1942).

13 Wash.—Campbell v. State, 12 Wash. 2d 459, 122 P.2d 458 (1942).

14 Wash.—Kelleher v. Minshull, 11 Wash. 2d 380, 119 P.2d 302 (1941).

15 Mo.—City of Springfield v. Stevens, 358 Mo. 699, 216 S.W.2d 450 (1949).

Tex.—Watts v. Mann, 187 S.W.2d 917 (Tex. Civ. App. Austin 1945), writ refused.

16 N.H.—Cloutier v. State Milk Control Bd., 92 N.H. 199, 28 A.2d 554 (1942).

17 U.S.—King v. Christie, 981 F. Supp. 2d 296, 86 Fed. R. Serv. 3d 1581 (D.N.J. 2013).

N.Y.—Big Apple Ice Cream, Inc. v. City of New York, 7 A.D.3d 282, 776 N.Y.S.2d 251 (1st Dep't 2004).

Pa.—Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224 (1974).

18 Ill.—People v. Lawrence, 390 Ill. 499, 61 N.E.2d 361 (1945).

Ind.—State v. Griffin, 226 Ind. 279, 79 N.E.2d 537 (1948).

Reasonable distinction required.

The fact that a tax statute discriminates in favor of a certain class does not make it arbitrary if the discrimination is founded upon a reasonable distinction.

Md.—Frey v. Comptroller of Treasury, 422 Md. 111, 29 A.3d 475 (2011).

19 Mo.—Ballentine v. Nester, 350 Mo. 58, 164 S.W.2d 378 (1942).

20 Ill.—Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1st Dist. 1979).

Minn.—General Mills v. Division of Employment and Sec. for Minn., 224 Minn. 306, 28 N.W.2d 847 (1947).

Wis.—WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).

21 Cal.—People v. International Steel Corp., 102 Cal. App. 2d Supp. 935, 226 P.2d 587 (App. Dep't Super. Ct. 1951).

Conn.—Lyman v. Adorno, 133 Conn. 511, 52 A.2d 702 (1947).

Vt.—In re Smith, Bell & Hauck Real Estate, Inc., 132 Vt. 295, 318 A.2d 183 (1974).

Wis.—Business Brokers Ass'n v. McCauley, 255 Wis. 5, 38 N.W.2d 8 (1949).

22 N.H.—Cloutier v. State Milk Control Bd., 92 N.H. 199, 28 A.2d 554 (1942).

Pa.—Adams v. City of New Kensington, 357 Pa. 557, 55 A.2d 392 (1947).

23 Mo.—City of Springfield v. Stevens, 358 Mo. 699, 216 S.W.2d 450 (1949).

24 Wis.—State v. Neveau, 237 Wis. 85, 294 N.W. 796 (1940).

25 U.S.—Barber v. Tadayasu Abo, 186 F.2d 775 (9th Cir. 1951).

26 N.J.—Raybestos-Manhattan, Inc. v. Glaser, 144 N.J. Super. 152, 365 A.2d 1 (Ch. Div. 1976), judgment aff'd, 156 N.J. Super. 513, 384 A.2d 176 (App. Div. 1978).

Pa.—Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224 (1974).

Tenn.—Estrin v. Moss, 221 Tenn. 657, 430 S.W.2d 345 (1968).

27 Va.—Bray v. County Bd. of Arlington County, 195 Va. 31, 77 S.E.2d 479 (1953).

28 U.S.—Warnick v. Bethlehem-Fairfield Shipyard, 68 F. Supp. 857 (D. Md. 1946).

Ill.—Department of Business and Economic Development v. Phillips, 43 Ill. 2d 28, 251 N.E.2d 170 (1969).

Minn.—City of Winona v. Policeman's Relief Ass'n of City of Winona, 281 N.W.2d 145 (Minn. 1979).

29 Minn.—George Benz Sons Inc. v. Ericson, 227 Minn. 1, 34 N.W.2d 725 (1948).

30 Utah—Hansen v. Public Emp. Retirement System Bd. of Administration, 122 Utah 44, 246 P.2d 591 (1952).

31 Ill.—Chatkin v. University of Ill., 411 Ill. 105, 103 N.E.2d 498 (1952).

32 Ala.—Peddycoart v. City of Birmingham, 354 So. 2d 808 (Ala. 1978).

Fla.—Lewis v. Mathis, 345 So. 2d 1066 (Fla. 1977).

Ill.—Du Bois v. Gibbons, 2 Ill. 2d 392, 118 N.E.2d 295 (1954).

Tex.—Gould v. City of El Paso, 440 S.W.2d 696 (Tex. Civ. App. El Paso 1969), writ refused n.r.e., (Oct. 1, 1969).

33 N.D.—Lindberg v. Benson, 70 N.W.2d 42 (N.D. 1955).

34 Wis.—State v. Golden Guernsey Dairy Co-op., 257 Wis. 254, 43 N.W.2d 31 (1950).

35 U.S.—Porter v. Shibe, 158 F.2d 68 (C.C.A. 10th Cir. 1946).

36 Ark.—Harper v. Brooksher, 153 Ark. 480, 240 S.W. 729 (1922).

Iowa—John R. Grubb, Inc. v. Iowa Housing Finance Authority, 255 N.W.2d 89 (Iowa 1977).

37 Idaho—State v. Evans, 73 Idaho 50, 245 P.2d 788 (1952).

End of Document

16B C.J.S. Constitutional Law § 1243

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1243. Classifications based on time or existing conditions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

While it has been held that a classification may not be based on existing conditions alone, classifications based on existing conditions have in some cases been sustained. Time may be a valid basis of classification.

Statutes prescribing classifications based on existing conditions have in some cases been sustained.[1] So-called "grandfather clauses," designed to preserve and protect interests existing at the time of a legislative enactment, have been ruled valid.[2] The courts have sustained an act requiring certain things of corporations thereafter formed but not of existing corporations,[3] an act forbidding gas companies of other municipalities to extend their mains to a municipality where a gas company already exists,[4] an act subjecting to certain requirements voters thereafter registering but not those already registered,[5] and acts regulating various occupations or businesses but exempting or not applying to those already established.[6] On the other hand, it has been held that statutes must not be based on existing conditions alone.[7]

A classification for purposes of legislation may be based on a time period.[8] Nevertheless, not every classification based on a chosen date or specified lapse of time is constitutional.[9] The facts with respect to the date or time made the basis of the

classification must be such as to support the conclusion that there is a reasonable basis for imposing the regulation on one class and not on the other.[10]

Footnotes

1 Cal.—Ex parte Stoltenberg, 165 Cal. 789, 134 P. 971 (1913).
Ky.—Hines v. Jenkins, 237 Ky. 676, 36 S.W.2d 387 (1929).
N.H.—Opinion of the Justices, 99 N.H. 505, 105 A.2d 924 (1954).

2 Colo.—Gates Rubber Co. v. South Suburban Metropolitan Recreation and Park Dist., 183 Colo. 222, 516 P.2d 436 (1973).

3 Wash.—State v. Fraternal Knights & Ladies, 35 Wash. 338, 77 P. 500 (1904).

4 N.J.—Millville Imp. Co. v. Pitman, Glassboro & Clayton Gas Co., 75 N.J.L. 410, 67 A. 1005 (N.J. Sup. Ct. 1907), aff'd, 76 N.J.L. 826, 71 A. 1134 (N.J. Ct. Err. & App. 1908).

5 Cal.—Schostag v. Cator, 151 Cal. 600, 91 P. 502 (1907).

6 Cal.—Ex parte Whitley, 144 Cal. 167, 77 P. 879 (1904).
Ill.—People ex rel. Dyer v. Walsh, 346 Ill. 52, 178 N.E. 343 (1931).
Wash.—Manos v. City of Seattle, 146 Wash. 210, 262 P. 965 (1927).

7 N.J.—Zullo v. Board of Health of Woodbridge Tp., 9 N.J. 431, 88 A.2d 625 (1952).
Tex.—Fort Worth & D. C. Ry. Co. v. Welch, 183 S.W.2d 730 (Tex. Civ. App. Amarillo 1944), writ refused.
Wis.—State v. Potokar, 245 Wis. 460, 15 N.W.2d 158 (1944).

8 Ill.—Schreiber v. Cook County, 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944).
Wash.—Campbell v. State, 12 Wash. 2d 459, 122 P.2d 458 (1942).
Wis.—Werlein v. Milwaukee Elec. Ry. & Transport Co., 267 Wis. 392, 66 N.W.2d 185, 46 A.L.R.2d 1091 (1954).

9 Cal.—C. Dudley De Velbiss Co. v. Kraintz, 101 Cal. App. 2d 612, 225 P.2d 969 (1st Dist. 1951).

10 Cal.—C. Dudley De Velbiss Co. v. Kraintz, 101 Cal. App. 2d 612, 225 P.2d 969 (1st Dist. 1951).

16B C.J.S. Constitutional Law § 1244

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1244. Classification in interest of public health, safety, or morals

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

Whether a statute enacted in the exercise of the police power constitutes a reasonable classification depends largely on the wording of the statute, the evil which it is intended to correct, and the means taken to accomplish the end desired.

Whether a statute enacted in the exercise of the police power constitutes a reasonable classification depends largely on the wording of the statute, the evil which it is intended to correct, and the means taken to accomplish the end desired.[1] Even though statutes are passed in the interest of the public health, safety, or morals, they are void as class legislation wherever they are made to apply arbitrarily only to certain persons or classes of persons or to make an unreasonable discrimination between persons or classes.[2]

Such statutes, however, may be partial in their application whenever such partiality or discrimination is based on reasonable distinctions inhering in the persons to which they apply or in their environment, occupations, or property.[3] The State may regulate certain occupations which may become unsafe if unregulated, with a view of protecting the public health and welfare; but such regulation must be uniform.[4] A law providing general regulations is not unconstitutional merely because compliance

with such regulations subjects certain persons, by reason of their situation, to greater inconvenience or expense than others differently situated.[5]

Footnotes

1 Wash.—Campbell v. State, 12 Wash. 2d 459, 122 P.2d 458 (1942).

2 N.C.—Cheek v. City of Charlotte, 273 N.C. 293, 160 S.E.2d 18 (1968).
Tex.—Dodgen v. Depuglio, 146 Tex. 538, 209 S.W.2d 588 (1948).
Va.—Joyner v. Centre Motor Co., 192 Va. 627, 66 S.E.2d 469 (1951).

3 Cal.—People v. Sullivan, 60 Cal. App. 2d 539, 141 P.2d 230 (4th Dist. 1943).
Ill.—Northern Ill. Coal Corp. v. Medill, 397 Ill. 98, 72 N.E.2d 844 (1947).
Or.—Kenji Namba v. McCourt, 185 Or. 579, 204 P.2d 569 (1949).
R.I.—Opinion to the House of Representatives, 80 R.I. 281, 96 A.2d 623 (1953).
Tex.—Dodgen v. Depuglio, 146 Tex. 538, 209 S.W.2d 588 (1948).

4 Ala.—State v. Woodall, 225 Ala. 178, 142 So. 838 (1932).

5 U.S.—Glucose Refining Co. v. City of Chicago, 138 F. 209 (C.C.N.D. Ill. 1905).

End of Document

16B C.J.S. Constitutional Law § 1245

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1245. Classification of localities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2976, 2982

Legislation applicable only to certain areas of the state may be valid provided it applies to all persons similarly situated in such areas and to all parts of the state where like conditions exist.

Legislation may constitutionally apply to certain territorial districts only.[1] It may apply, for example, to cities,[2] boroughs,[3] or counties,[4] or it may except incorporated towns and cities from the provision of a penal act.[5] A statute or ordinance which makes different provisions for persons residing outside a municipality from those residing within is valid if the classification is based on a reasonable distinction even though it results in some practical inequalities.[6]

While it has been stated that it is not necessary that the legislature address every locale that may be confronted with a similar, as opposed to an identical, problem which is the intended object of a particular remedial statute,[7] in order that legislation may be valid which applies only to portions of the state, it must apply to all persons who are similarly situated in such localities and to all parts of the state where like conditions exist.[8] Statutes applying to certain portions of the state by name or description of

boundaries have been sustained where it appears that there is a reasonable ground for distinguishing these districts from others[9] but not where no such ground of distinction appears.[10]

If there is a reasonable basis of distinction, a statute may be made to apply solely to certain cities,[11] counties,[12] townships,[13] or school districts,[14] without applying to others.

The legislature may classify cities,[15] as well as other political subdivisions such as counties,[16] townships,[17] or school districts,[18] according to population, and, having made such classification, may prescribe different powers and regulations for each class provided they are uniform for each class.[19] However, the classification of cities and other territorial subdivisions according to population is invalid if it is arbitrary, unreasonable, or unjust.[20]

A law which discriminates between counties or municipalities of the same class is invalid.[21] However, a classification of municipal corporations, if based on reasonable grounds, is not void merely because one class contains only a single such corporation.[22]

Footnotes

1 Ill.—Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945).
Mich.—Hertel v. Racing Com'r, Dept. of Agriculture, 68 Mich. App. 191, 242 N.W.2d 526 (1976).
N.J.—Parking Authority of City of Atlantic City v. Board of Chosen Freeholders of Atlantic County, 180 N.J. Super. 282, 434 A.2d 676 (Law Div. 1981).

2 Tenn.—City of Chattanooga v. Davis, 54 S.W.3d 248 (Tenn. 2001).

3 Pa.—Borough of New Wilmington v. Sinclair's Estate, 105 Pa. Super. 331, 161 A. 621 (1932).

4 Ariz.—Long v. Napolitano, 203 Ariz. 247, 53 P.3d 172 (Ct. App. Div. 1 2002).
Ill.—People ex rel. Vermilion County Conservation Dist. v. Lenover, 43 Ill. 2d 209, 251 N.E.2d 175 (1969).
Wash.—Todd v. Kitsap County, 101 Wash. 2d 245, 676 P.2d 484 (1984).

5 Colo.—Dwyer v. People, 82 Colo. 574, 261 P. 858 (1927).

6 Ill.—Heartt v. Village of Downers Grove, 278 Ill. 92, 115 N.E. 869 (1917).
N.Y.—People v. Bohnke, 287 N.Y. 154, 38 N.E.2d 478 (1941).
S.C.—Duke Power Co. v. South Carolina Public Service Com'n, 284 S.C. 81, 326 S.E.2d 395 (1985).

7 N.J.—Parking Authority of City of Atlantic City v. Board of Chosen Freeholders of Atlantic County, 180 N.J. Super. 282, 434 A.2d 676 (Law Div. 1981).

8 Ill.—Badenoch v. City of Chicago, 222 Ill. 71, 78 N.E. 31 (1906).
Md.—Maryland Coal & Realty Co. v. Bureau of Mines of State, 193 Md. 627, 69 A.2d 471 (1949).
Mo.—State on Inf. of Wallach v. Loesch, 350 Mo. 989, 169 S.W.2d 675 (1943).

9 Md.—Maryland Coal & Realty Co. v. Bureau of Mines of State, 193 Md. 627, 69 A.2d 471 (1949).
Mich.—Baker v. State Land Office Bd., 294 Mich. 587, 293 N.W. 763 (1940).
N.C.—State v. Wolf, 145 N.C. 440, 59 S.E. 40 (1907).

10 Tenn.—Malone v. Williams, 118 Tenn. 390, 103 S.W. 798 (1907).

11 Ill.—Kloss v. Suburban Cook County Tuberculosis Sanitarium Dist., 404 Ill. 87, 88 N.E.2d 89 (1949).

12 U.S.—Levy v. Parker, 346 F. Supp. 897 (E.D. La. 1972), judgment aff'd, 411 U.S. 978, 93 S. Ct. 2266, 36 L. Ed. 2d 955 (1973).
N.J.—Parking Authority of City of Atlantic City v. Board of Chosen Freeholders of Atlantic County, 180 N.J. Super. 282, 434 A.2d 676 (Law Div. 1981).
Or.—Foeller v. Housing Authority of Portland, 198 Or. 205, 256 P.2d 752 (1953).

13 Ark.—Hendricks v. Block, 80 Ark. 333, 97 S.W. 63 (1906).
Ind.—Strange v. Board of Com'rs of Grant County, 174 Ind. 756, 91 N.E. 506 (1910).

14 Tex.—Marrs v. Mumme, 25 S.W.2d 215 (Tex. Civ. App. San Antonio 1930), writ denied, 120 Tex. 383, 40 S.W.2d 31 (1931).

15 Ill.—People ex rel. Stamos v. Public Bldg. Commission of Chicago, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).
Iowa—City of Waterloo v. Selden, 251 N.W.2d 506 (Iowa 1977).
Or.—Foeller v. Housing Authority of Portland, 198 Or. 205, 256 P.2d 752 (1953).

16 Ala.—Mitchell v. Mobile County, 294 Ala. 130, 313 So. 2d 172 (1975).
Fla.—State Farm Mut. Auto. Ins. Co. v. Palm Springs General Hospital, Inc. of Hialeah, 232 So. 2d 737 (Fla. 1970).
Ill.—People ex rel. Scott v. Chicago Thoroughbred Enterprises, Inc., 56 Ill. 2d 210, 306 N.E.2d 7 (1973).

17 Ind.—Cummins v. Pence, 174 Ind. 115, 91 N.E. 529 (1910).

18 Cal.—Grigsby v. King, 202 Cal. 299, 260 P. 789 (1927).
Ind.—Bally v. Guilford Tp. School Corp., 234 Ind. 273, 126 N.E.2d 13 (1955).
N.Y.—People, on Complaint of McCarthy v. Braunstein, 248 N.Y. 308, 162 N.E. 89 (1928).

19 Cal.—Ex parte Jacobson, 16 Cal. App. 2d 497, 60 P.2d 1001 (2d Dist. 1936).
S.C.—Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949).
Wash.—McQueen v. Kittitas County, 115 Wash. 672, 198 P. 394 (1921).

20 Ala.—Comer v. City of Mobile, 337 So. 2d 742 (Ala. 1976).
S.C.—Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949).
Tenn.—Canale v. Steveson, 224 Tenn. 578, 458 S.W.2d 797 (1970).

21 S.C.—Welling v. Clinton Newberry Natural Gas Authority, 221 S.C. 417, 71 S.E.2d 7 (1952).
Tenn.—Hobbs v. Lawrence County, 193 Tenn. 608, 247 S.W.2d 73 (1952).

22 Neb.—State v. Hunter, 99 Neb. 520, 156 N.W. 975 (1916).

End of Document

16B C.J.S. Constitutional Law § 1246

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1246. Classification of corporations and associations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2979, 2980, 2985

The inherent difference between corporations and natural persons, between different classes of corporations, and between corporations and other entities may justify classification and different treatment in legislation.

The inherent differences between corporations and natural persons, between classes of corporations, and between corporations and other entities may justify classification and different treatment in legislation.[1] Statutes are not void as unreasonable class legislation merely because the privileges granted or regulations prescribed by them apply exclusively to unincorporated associations,[2] or to corporations,[3] or to particular classes of corporations or associations,[4] such as banks,[5] building and loan associations,[6] insurance companies,[7] and surety companies.[8]

While the legislature may not arbitrarily discriminate between corporations of the same class,[9] discriminatory provisions of a statute based on reasonable grounds are not invalid as class legislation.[10]

Statutes have been declared void as providing unreasonable discriminations against particular corporations[11] or classes of corporations[12] or as unreasonably granting special privileges or immunities to certain corporations only.[13] The legislature may differentiate between foreign and domestic corporations,[14] provided the differences between the two classes of corporations have a rational relationship to the purposes of the statute.[15]

A statute applying solely to corporations doing business in counties having a certain population has been held invalid.[16]

Public service corporations constitute a distinct class,[17] which may be regulated by direct legislation, provided the legislation applies alike to all such corporations of the same class.[18] The legislature may enact laws applicable to particular classes of public service corporations.[19]

Discrimination between municipally owned and privately owned utilities.

The fact that a municipality which owns or operates a public utility is acting in its proprietary capacity in the conduct of private business does not render invalid a classification which divides owners of such utilities into publicly owned corporations and those privately owned.[20]

Footnotes

1 N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).
Pa.—Equitable Credit & Discount Co. v. Geier, 342 Pa. 445, 21 A.2d 53 (1941).

2 Iowa—Brady v. Mattern, 125 Iowa 158, 100 N.W. 358 (1904).
Mich.—U.S. Heater Co. v. Iron Molders' Union of North America, 129 Mich. 354, 88 N.W. 889 (1902).

3 U.S.—U.S. Steel Products Co. v. U.S., 36 F. Supp. 368 (D.N.J. 1941).
Tenn.—Camden Fire Ins. Ass'n v. Haston, 153 Tenn. 675, 284 S.W. 905 (1926).

4 U.S.—U.S. Steel Products Co. v. U.S., 36 F. Supp. 368 (D.N.J. 1941).
Iowa—Decker v. American University, 236 Iowa 895, 20 N.W.2d 466 (1945).
N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).
Pa.—Harr v. Boucher, 142 Pa. Super. 114, 15 A.2d 699 (1940).
Va.—French v. Cumberland Bank & Trust Co., 194 Va. 475, 74 S.E.2d 265 (1953).

5 N.Y.—Woodside Sav. & Loan Ass'n v. Gallman, 73 Misc. 2d 357, 341 N.Y.S.2d 757 (Sup 1972), judgment aff'd, 34 N.Y.2d 674, 356 N.Y.S.2d 47, 312 N.E.2d 180 (1974).
Pa.—Commercial Banking Corp. v. Freeman, 353 Pa. 563, 46 A.2d 233 (1946).
Va.—French v. Cumberland Bank & Trust Co., 194 Va. 475, 74 S.E.2d 265 (1953).

6 Ark.—Mechanics' Bldg. & Loan Ass'n v. Coffman, 110 Ark. 269, 162 S.W. 1090 (1913).
Mo.—State ex rel. Great American Home Sav. Institution v. Lee, 288 Mo. 679, 233 S.W. 20 (1921).

7 Tenn.—Life & Cas. Ins. Co. of Tenn. v. McCormack, 174 Tenn. 327, 125 S.W.2d 151 (1939).

8 Ohio—Urner v. Outcalt, 32 Ohio App. 357, 168 N.E. 55 (1st Dist. Hamilton County 1928).

9 R.I.—Mexican Petroleum Corp. v. Bliss, 43 R.I. 243, 110 A. 867 (1920).

10 U.S.—Lake Terminal R. Co. v. U.S., 34 F. Supp. 963 (N.D. Ohio 1940).
Minn.—Muller v. Theo. Hamm Brewing Co., 197 Minn. 608, 268 N.W. 204 (1936).
Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).

11 Ill.—People ex rel. Rinne v. Blocki, 203 Ill. 363, 67 N.E. 809 (1903).

12 Kan.—Livingston v. Susquehanna Oil Co., 113 Kan. 702, 216 P. 296 (1923).
Vt.—State v. Cadigan, 73 Vt. 245, 50 A. 1079 (1901).

13 Ill.—Sweney Gasoline & Oil Co. v. Toledo, P. & W. R. Co., 42 Ill. 2d 265, 247 N.E.2d 603 (1969).

Ind.—Evansville & O. Valley Ry. Co. v. Southern Ind. Rural Elec. Corp., 231 Ind. 648, 109 N.E.2d 901 (1953).

14 U.S.—Manufacturers Life Ins. Co. v. U.S., 91 Ct. Cl. 466, 32 F. Supp. 284 (1940).

15 Cal.—Franscioni v. Soledad Land & Water Co., 170 Cal. 221, 149 P. 161 (1915).
Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).

16 U.S.—Etowah Light & Power Co. v. Yancey, 197 F. 845 (C.C.E.D. Tenn. 1911).

17 U.S.—Budd v. People, 143 U.S. 517, 12 S. Ct. 468, 36 L. Ed. 247 (1892).
Ill.—McDougall v. Lueder, 389 Ill. 141, 58 N.E.2d 899, 156 A.L.R. 1059 (1945).

18 Ind.—Winfield v. Public Service Commission of Indiana, 187 Ind. 53, 118 N.E. 531 (1918).
Tenn.—Stocker v. City of Nashville, 174 Tenn. 483, 126 S.W.2d 339, 124 A.L.R. 345 (1939).

19 Idaho—Williams v. Baldridge, 48 Idaho 618, 284 P. 203 (1930).
Ill.—Shellabarger Elevator Co. v. Illinois Cent. R. Co., 278 Ill. 333, 116 N.E. 170 (1917).
Ind.—Pittsburgh, C., C. & St. L. Ry. Co. v. Chappell, 183 Ind. 141, 106 N.E. 403 (1914).
Va.—Joyner v. Matthews, 193 Va. 10, 68 S.E.2d 127 (1951).

20 Iowa—Pennington v. Town of Sumner, 222 Iowa 1005, 270 N.W. 629, 109 A.L.R. 355 (1936).

End of Document

16B C.J.S. Constitutional Law § 1247

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1247. Regulation of professions, occupations, and businesses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2979, 2983, 2985, 2988

Professions, occupations, and businesses may be classified by the legislature according to natural and reasonable lines of distinction, and if a statute affects alike all persons of the same class, it is not invalid as class legislation; but statutes which are restricted to certain professions or occupations, without any reasonable basis of distinction, are invalid.

Occupations and businesses may be properly subdivided and separately classified by statute or ordinance if classification is founded on natural, intrinsic, or fundamental distinctions which are reasonable in their relation to the object of the legislation.[1] The mere fact that a statute or ordinance applies only to a particular position[2] or profession,[3] or to a particular trade, occupation, or business,[4] or discriminates between persons in different classes of occupations or lines of business,[5] does not render it unconstitutional as class legislation. Such statutes are valid whenever the partial application or discrimination is based on real and reasonable distinctions existing in the subject matter and affects alike all persons of the same class or pursuing the same business under the same conditions.[6]

Statutes, however, are void as class legislation wherever they are restricted in their application to certain professions, trades, occupations, or businesses without any reasonable basis for such partial application or discrimination, or whenever persons

engaged in the same business are subject to different restrictions or are given different privileges under the same conditions.[7] Legislative classification is entitled to great weight and will not be set aside unless it is clearly arbitrary and capricious.[8]

These rules have been applied in determining the constitutionality of various statutes regulating business, occupations, and calling,[9] including laws relating to attorneys,[10] banks and bankers,[11] dentists,[12] educational institutions,[13] intoxicating liquors,[14] municipal employees,[15] and physicians and surgeons.[16] A legislature may place the mining industry in a separate class for the purposes of legislation.[17]

With respect to the transportation of persons or property by motor vehicles, whether owned or operated by individuals, firms, or corporations, a regulation is valid which discriminates between vehicles transporting passengers and those used for hauling freight[18] or between contract carriers and owner carriers.[19] Also, a regulation which makes a discrimination based on the character of the equipment used has been upheld.[20]

Footnotes

1 Cal.—Times Mirror Co. v. City of Los Angeles, 192 Cal. App. 3d 170, 237 Cal. Rptr. 346 (2d Dist. 1987).
Ill.—Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).
Miss.—Kohlmeyer & Co. v. Rotwein, 186 So. 2d 768 (Miss. 1966).

2 Mont.—Gullickson v. Mitchell, 113 Mont. 359, 126 P.2d 1106 (1942).
N.Y.—Conlon v. Marshall, 185 Misc. 638, 59 N.Y.S.2d 52 (Sup 1945), order aff'd, 271 A.D. 972, 68 N.Y.S.2d 438 (2d Dep't 1947).

3 Idaho—Ex parte Bottjer, 45 Idaho 168, 260 P. 1095 (1927).
Mass.—Com. v. Brown, 302 Mass. 523, 20 N.E.2d 478 (1939).

4 Ill.—Krebs v. Board of Trustees of Teachers' Retirement System, 410 Ill. 435, 102 N.E.2d 321, 27 A.L.R.2d 1434 (1951).
La.—McManemin v. Bossier Parish Police Jury, 228 So. 2d 36 (La. Ct. App. 2d Cir. 1969).

5 Cal.—Pacific Gas & Elec. Co. v. Moore, 37 Cal. App. 2d 91, 98 P.2d 819 (3d Dist. 1940).
Ky.—Ratliff v. Hill, 293 Ky. 36, 168 S.W.2d 336, 145 A.L.R. 754 (1943).
Wash.—Laughney v. Maybury, 145 Wash. 146, 259 P. 17, 54 A.L.R. 393 (1927).

6 N.M.—Pharmaceutical Mfrs. Ass'n v. New Mexico Bd. of Pharmacy, 86 N.M. 571, 1974-NMCA-038, 525 P.2d 931 (Ct. App. 1974).
Okla.—Spiers v. Magnolia Petroleum Co., 1951 OK 278, 206 Okla. 503, 244 P.2d 843 (1951).
Or.—Thompson v. Dickson, 202 Or. 394, 275 P.2d 749 (1954).
Wash.—Texas Co. v. Cohn, 8 Wash. 2d 360, 112 P.2d 522 (1941).

7 Cal.—Bautista v. Jones, 25 Cal. 2d 746, 155 P.2d 343 (1944).
Ohio—Frecker v. City of Dayton, 153 Ohio St. 14, 41 Ohio Op. 109, 90 N.E.2d 851 (1950).
Or.—Anthony v. Veatch, 189 Or. 462, 220 P.2d 493 (1950).
R.I.—Opinion to the House of Representatives, 80 R.I. 281, 96 A.2d 623 (1953).

8 Del.—United Cigar-Whelan Stores Corporation v. Delaware Liquor Commission, 41 Del. 74, 15 A.2d 442 (Gen. Sess. 1940).

9 Cal.—Hollman v. Warren, 32 Cal. 2d 351, 196 P.2d 562 (1948).
Mont.—Pike v. Porter, 126 Mont. 482, 253 P.2d 1055 (1952).
Tenn.—Fleet Transport Co., Inc. v. Tennessee Public Service Commission, 545 S.W.2d 4 (Tenn. 1976).
Tex.—Ex parte Engel, 158 Tex. Crim. 95, 253 S.W.2d 430 (1952).
Wash.—City of Spokane v. Coon, 3 Wash. 2d 243, 100 P.2d 36 (1940).

10 Or.—Bennett v. Oregon State Bar, 256 Or. 37, 470 P.2d 945, 53 A.L.R.3d 1291 (1970).

11 Va.—French v. Cumberland Bank & Trust Co., 194 Va. 475, 74 S.E.2d 265 (1953).
Wash.—In re Peterson's Estate, 182 Wash. 29, 45 P.2d 45 (1935).

12 Mass.—Com. v. Brown, 302 Mass. 523, 20 N.E.2d 478 (1939).
Or.—Semler v. Oregon State Board of Dental Examiners, 148 Or. 50, 34 P.2d 311 (1934), aff'd, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).
Tex.—Sherman v. State Board of Dental Examiners, 116 S.W.2d 843 (Tex. Civ. App. San Antonio 1938), writ refused.
Wash.—Campbell v. State, 12 Wash. 2d 459, 122 P.2d 458 (1942).

13 Neb.—State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302, 144 A.L.R. 138 (1942).
N.Y.—Institute of the Metropolis v. University of State of New York, 159 Misc. 529, 289 N.Y.S. 660 (Sup 1936), aff'd, 249 A.D. 33, 291 N.Y.S. 893 (3d Dep't 1936), judgment aff'd, 274 N.Y. 504, 10 N.E.2d 521 (1937).

14 Ariz.—Garcia v. Arizona State Liquor Bd., 21 Ariz. App. 456, 520 P.2d 852 (Div. 1 1974).
Neb.—Gas'N Shop, Inc. v. Nebraska Liquor Control Com'n, 229 Neb. 530, 427 N.W.2d 784 (1988).

15 Iowa—Bennett v. City of Redfield, 446 N.W.2d 467 (Iowa 1989).

16 Ariz.—Goodman v. Samaritan Health System, 195 Ariz. 502, 990 P.2d 1061 (Ct. App. Div. 1 1999).
Fla.—Coy v. Florida Birth-Related Neurological Injury Compensation Plan, 595 So. 2d 943 (Fla. 1992).

17 Alaska—Johnson v. Kennecott Copper Corp., 5 Alaska 571, 1916 WL 308 (Terr. Alaska 1916), aff'd, 248 F. 407, 4 Alaska Fed. 666 (C.C.A. 9th Cir. 1918).
Colo.—People ex rel. Dunbar v. Gilpin Inv. Co., 177 Colo. 132, 493 P.2d 359 (1972).

18 Wis.—State v. Public Service Commission of Wisconsin, 207 Wis. 664, 242 N.W. 668 (1932).

19 U.S.—Ogden & Moffett Co. v. Michigan Public Utilities Commission, 58 F.2d 832 (E.D. Mich. 1931), aff'd, 286 U.S. 525, 52 S. Ct. 495, 76 L. Ed. 1268 (1932).

20 N.Y.—Welch v. Hartnett, 127 Misc. 221, 215 N.Y.S. 540 (Sup 1926).
Wash.—Prater v. Department of Public Service of Washington, 187 Wash. 335, 60 P.2d 238 (1936).

End of Document

16B C.J.S. Constitutional Law § 1248

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1248. Regulation and protection of employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2981, 2982, 2985

While statutes involving an unreasonable and arbitrary classification will not be upheld, statutes regulating the relation of employer and employee are valid if they act uniformly on all persons and property of the same class under the same circumstances.

Regulations of employment are not invalid as class legislation if they operate alike on all persons and property of the same class under the same circumstances and conditions.[1] The legislature may enact a law which is applicable only to a specified class or classes of employers or employees, provided the classification is reasonable,[2] and may treat labor problems arising in charitable institutions in a manner different from those arising in enterprises operated for profit.[3] However, the legislature may not set up artificial unreal boundaries as to what constitutes an industrial relationship or a labor dispute.[4]

Unemployment compensation laws have been held valid as against the contention that they constitute class legislation[5] although they exempt certain lines of employment[6] or require contributions only from those employers who employ more than a specified number of employees.[7]

Statutes which deny to employers any part of the full right accorded to others to resort to the courts for relief,[8] or which prescribe a form of procedure in cases growing out of labor disputes different from that in any other kind of controversy,[9] have been ruled invalid as class legislation. Other statutes which have been declared invalid because of arbitrary and unreasonable classification include statutes which single out workers employed in particular industries and restrict them as to the number of hours they shall work,[10] a statute requiring one commencing employment with an employer whose employees are on strike to register with a government agency.[11]

Footnotes

1 U.S.—Stapleton v. Mitchell, 60 F. Supp. 51 (D. Kan. 1945).
Ala.—Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810 (1944).
Cal.—California Drive-In Restaurant Ass'n v. Clark, 22 Cal. 2d 287, 140 P.2d 657, 147 A.L.R. 1028 (1943).

2 Cal.—California Drive-In Restaurant Ass'n v. Clark, 22 Cal. 2d 287, 140 P.2d 657, 147 A.L.R. 1028 (1943).
Colo.—Smith-Brooks Printing Co. v. Young, 103 Colo. 199, 85 P.2d 39 (1938).
Mich.—Grosse Pointe Fire Fighters Ass'n, Local No. 533 v. Village of Grosse Pointe Park, 303 Mich. 405, 6 N.W.2d 725 (1942).

3 Minn.—Fairview Hospital Ass'n v. Public Bldg. Service and Hospital and Institutional Emp. Union Local No. 113 A. F. L., 241 Minn. 523, 64 N.W.2d 16 (1954).

4 N.J.—Outdoor Sports Corp. v. American Federation of Labor, Local 23132, 6 N.J. 217, 78 A.2d 69, 29 A.L.R.2d 313 (1951).

5 Minn.—Eldred v. Division of Employment and Sec., Dept. of Social Sec., 209 Minn. 58, 295 N.W. 412 (1940).
Pa.—Department of Labor and Industry v. New Enterprise Rural Elec. Co-op., 352 Pa. 413, 43 A.2d 90 (1945).
Wash.—State Unemployment Compensation and Placement v. Hunt, 22 Wash. 2d 897, 158 P.2d 98 (1945).

6 Cal.—Gillum v. Johnson, 7 Cal. 2d 744, 62 P.2d 1037, 108 A.L.R. 595 (1936).
Ill.—Smith v. Murphy, 384 Ill. 34, 50 N.E.2d 844 (1943).
Tex.—Friedman v. American Sur. Co. of New York, 137 Tex. 149, 151 S.W.2d 570 (1941).

7 Cal.—Gillum v. Johnson, 7 Cal. 2d 744, 62 P.2d 1037, 108 A.L.R. 595 (1936).
Iowa—Mt. Vernon Bank & Trust Co. v. Iowa Employment Sec. Commission, 233 Iowa 1165, 11 N.W.2d 402 (1943).
N.Y.—Bohling v. Corsi, 204 Misc. 778, 127 N.Y.S.2d 591 (Sup 1953), judgment aff'd, 306 N.Y. 815, 118 N.E.2d 823 (1954).
Wash.—Shelton Hotel Co. v. Bates, 4 Wash. 2d 498, 104 P.2d 478 (1940).

8 N.H.—In re Opinion of the Justices, 86 N.H. 597, 166 A. 640 (1933).

9 Mass.—In re Opinion of the Justices, 275 Mass. 580, 176 N.E. 649 (1931).
N.H.—In re Opinion of the Justices, 86 N.H. 597, 166 A. 640 (1933).

10 S.C.—Gasque, Inc. v. Nates, 191 S.C. 271, 2 S.E.2d 36 (1939).

11 Utah—State v. Packard, 122 Utah 369, 250 P.2d 561 (1952).

16B C.J.S. Constitutional Law § 1249

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1249. Regulation and protection of employees—Workers' compensation acts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2981, 2982, 2985

Unless the classification is arbitrary or unreasonable, workers' compensation acts, classifying occupations or other subject matter to which the acts shall extend, are not unconstitutional as class legislation.

The rule that the discretion of the legislature as to the classification of occupations or other subject matter for regulation will not be interfered with by the court so long as the classification is not arbitrary or unreasonable applies to legislation determining the persons to whom, and the occupations to which, a workers' compensation act shall extend.[1] If the classification is reasonable and natural, and the statute bears a reasonable relation to the objects sought to be accomplished, and operates uniformly on all members of the class to which it is made applicable, it is valid.[2]

Primarily, the fundamental classification common to all of the elective acts, making a distinction between those employers or employees who elect to come within the operation of the act and those who choose to remain without, has been sustained.[3] A statute, elective as to both employers and employees, is not improper because the results of a failure to accept the act are not identical in the case of each.[4] Furthermore, a statute may, without violating any constitutional inhibition, be made elective as to private employers and compulsory as to municipal employers[5] or compulsory as to only one type of private employer.[6]

The legislature may establish a measure of duty owing to a public employee different from that owing to a citizen who is not in the public service.[7]

The legislature may constitutionally put natural children under the age of 18 years in different classes with respect to dependency.[8]

A workers' compensation statute is not invalid because its operation is restricted to certain occupations designated as hazardous,[9] or to a single industry of this character,[10] or because it classifies as hazardous any employment in which four or more workers or operatives are regularly employed.[11]

A compensation act is not unconstitutional as class legislation because it exempts from its operation certain classes of employees[12] or because it bases its exceptions on the number of persons employed[13] or on the amount of wages received.[14]

Footnotes

1 Mich.—Jones v. Bouza, 7 Mich. App. 561, 152 N.W.2d 393 (1967), judgment aff'd, 381 Mich. 299, 160 N.W.2d 881 (1968).
N.J.—De Monaco v. Renton, 18 N.J. 352, 113 A.2d 782 (1955).
N.Y.—Szold v. Outlet Embroidery Supply Co., 274 N.Y. 271, 8 N.E.2d 858 (1937).
Tenn.—Norman v. Tennessee State Bd. of Claims, 533 S.W.2d 719 (Tenn. 1975).

2 U.S.—Lower Vein Coal Co. v. Industrial Bd. of Indiana, 255 U.S. 144, 41 S. Ct. 252, 65 L. Ed. 555 (1921).
Ark.—Hagger v. Wortz Biscuit Co., 210 Ark. 318, 196 S.W.2d 1 (1946).
Colo.—Flick v. Industrial Com'n of Colo., 78 Colo. 117, 239 P. 1022 (1925).
Ill.—Casparis Stone Co. v. Industrial Board of Illinois, 278 Ill. 77, 115 N.E. 822 (1917).

3 Ill.—Keeran v. Peoria, Bloomington & Champaign Traction Co., 277 Ill. 413, 115 N.E. 636 (1917).
N.D.—State for Benefit of Workmen's Compensation Fund v. E. W. Wylie Co., 79 N.D. 471, 58 N.W.2d 76 (1953).

4 U.S.—Hawkins v. Bleakly, 243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 (1917).
Iowa—Hunter v. Colfax Consol. Coal Co., 175 Iowa 245, 154 N.W. 1037 (1915), opinion amended on other grounds on denial of reh'g, 175 Iowa 245, 157 N.W. 145 (1916).

5 Mich.—Wood v. City of Detroit, 188 Mich. 547, 155 N.W. 592 (1915).

6 U.S.—Lower Vein Coal Co. v. Industrial Bd. of Indiana, 255 U.S. 144, 41 S. Ct. 252, 65 L. Ed. 555 (1921).

7 Mont.—Lewis and Clark County v. Industrial Acc. Board of Montana, 52 Mont. 6, 155 P. 268 (1916).

8 Ariz.—Ocean Accident & Guarantee Corporation v. Industrial Commission of Arizona, 32 Ariz. 54, 255 P. 598 (1927).

9 N.H.—Wheeler v. Contoocook Mills Corp., 77 N.H. 551, 94 A. 265 (1915).

10 U.S.—Johnston v. Kennecott Copper Corp, 248 F. 407, 4 Alaska Fed. 666 (C.C.A. 9th Cir. 1918).
Alaska—Johnson v. Kennecott Copper Corp., 5 Alaska 571, 1916 WL 308 (Terr. Alaska 1916), aff'd, 248 F. 407, 4 Alaska Fed. 666 (C.C.A. 9th Cir. 1918).
Mont.—Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 119 P. 554 (1911).

11 N.Y.—Europe v. Addison Amusements, 231 N.Y. 105, 131 N.E. 750 (1921).

12 U.S.—Middleton v. Texas Power & Light Co., 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919).
Ill.—Deibeikis v. Link-Belt Co., 261 Ill. 454, 104 N.E. 211 (1914).
Tenn.—Scott v. Nashville Bridge Co., 143 Tenn. 86, 223 S.W. 844 (1920).

13 U.S.—Ward & Gow v. Krinsky, 259 U.S. 503, 42 S. Ct. 529, 66 L. Ed. 1033, 28 A.L.R. 1207 (1922).
R.I.—Sayles v. Foley, 38 R.I. 484, 96 A. 340 (1916).
Tenn.—Scott v. Nashville Bridge Co., 143 Tenn. 86, 223 S.W. 844 (1920).

Wis.—Borgnis v. Falk Co., 147 Wis. 327, 133 N.W. 209 (1911).

14 R.I.—Sayles v. Foley, 38 R.I. 484, 96 A. 340 (1916).

End of Document

16B C.J.S. Constitutional Law § 1250

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

2. Manner or Purpose of Classification

§ 1250. Miscellaneous classifications

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991

General rules for determining whether the classification of persons or things for purposes of legislation is reasonable and valid, or arbitrary and invalid, have been applied to laws relating to taxation generally, license or privilege taxes, motor vehicles, and various other subjects.

The number of classes into which the citizens may constitutionally be classified is practically infinite.[1] Various statutes and ordinances have been sustained on the theory that they related to separate classes capable of being dealt with by distinct bodies of legislation.[2]

On the other hand, various statutes or other regulatory measures have been ruled invalid as class legislation,[3] such as those dealing with elections,[4] old age assistance,[5] and public officers and employees.[6]

Because of their speed and power, motor vehicles may properly be put in a class by themselves for regulation.[7] Hence, where a statute or ordinance regulating their use and operation applies to and affects all alike within a particular class, and the classification is a reasonable one, it is not invalid as an unjust discrimination and as class legislation because it does not affect

and apply equally to all vehicles using the highways,[8] and the classification will be upheld unless it is so manifestly unjust as to impose a burden on one class to the exclusion of another without a reasonable distinction.[9] A regulation is invalid as discriminatory or class legislation if it makes an unreasonable classification of motor vehicles for the purpose of regulation,[10] as where it places trucks and tractors used for agricultural purposes on a different footing from trucks and tractors used for commercial and other purposes.[11]

The constitutional provisions discussed do not require an absolute rule of equality of taxation but permit the legislature to make classifications in imposing taxes.[12] The rule that a statute classifying persons or things is valid when, and only when, the classification is reasonable and the law operates equally on all within the same class applies to legislation relating to taxation.[13]

Statutes requiring licenses of, or imposing license or privilege taxes on, all persons embraced in a class, based on a classification conforming to natural and reasonable lines of distinction, are valid.[14]

License and license tax statutes are invalid as class legislation where the classification is arbitrary and is not based on any reasonable distinction.[15]

Footnotes

1 Neb.—State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

2 Mo.—Straughan v. Meyers, 268 Mo. 580, 187 S.W. 1159 (1916).
Neb.—Campbell v. City of Lincoln, 195 Neb. 703, 240 N.W.2d 339 (1976).
N.H.—Opinion of the Justices, 99 N.H. 505, 105 A.2d 924 (1954).
Wis.—State ex rel. La Follette v. Reuter, 36 Wis. 2d 96, 153 N.W.2d 49 (1967).

3 Ark.—Applegate v. Lum Jung Luke, 173 Ark. 93, 291 S.W. 978 (1927).
Mo.—Roberts v. Kaemmerer, 220 Mo. App. 582, 287 S.W. 1057 (1926).
N.C.—Edgerton v. Hood, 205 N.C. 816, 172 S.E. 481 (1934).
Pa.—Case of Mansfield, 22 Pa. Super. 224, 1903 WL 3058 (1903).

4 Or.—In re Oregon Tunnel Dist. No. 1, 120 Or. 594, 253 P. 1 (1927); In re North Unit Irr. Dist. in Jefferson County, 95 Or. 520, 187 P. 839 (1920).

5 Ind.—Department of Public Welfare of Allen County v. Potthoff, 220 Ind. 574, 44 N.E.2d 494 (1942).

6 Cal.—Mansur v. City of Sacramento, 39 Cal. App. 2d 426, 103 P.2d 221 (3d Dist. 1940).
Conn.—Warner v. Gabb, 139 Conn. 310, 93 A.2d 487 (1952).
Pa.—Com. ex rel. Maurer to Use of Braden v. O'Neill, 368 Pa. 369, 83 A.2d 382 (1951).
R.I.—Opinion to the House of Representatives, 80 R.I. 281, 96 A.2d 623 (1953).
Tex.—Burroughs v. Lyles, 142 Tex. 704, 181 S.W.2d 570 (1944).

7 Colo.—Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).
Ill.—People v. Sisk, 297 Ill. 314, 130 N.E. 696 (1921).
Iowa—Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951).
Ky.—Com. v. Coffman, 453 S.W.2d 759 (Ky. 1970).
Mont.—State ex rel. Thompson v. District Court of Fourth Judicial Dist. in and for Missoula County, 108 Mont. 362, 91 P.2d 422 (1939).

8 Cal.—T.E. Connolly, Inc., v. State, 72 Cal. App. 2d 145, 164 P.2d 60 (3d Dist. 1945).
Ill.—City of Evanston v. Wazau, 364 Ill. 198, 4 N.E.2d 78, 106 A.L.R. 789 (1936).
Ind.—Kryder v. State, 214 Ind. 419, 15 N.E.2d 386 (1938).
Minn.—City of Duluth v. Northland Greyhound Lines, 236 Minn. 260, 52 N.W.2d 774 (1952).
W. Va.—Darnall Trucking Co. v. Simpson, 122 W. Va. 656, 12 S.E.2d 516 (1940).

9 Ind.—Baldwin v. State, 194 Ind. 303, 141 N.E. 343 (1923).

10 Minn.—State v. Ernst, 209 Minn. 586, 297 N.W. 24, 134 A.L.R. 643 (1941).

Tex.—Ex parte Faison, 93 Tex. Crim. 403, 248 S.W. 343 (1923).
Wash.—Kaufman v. West, 133 Wash. 192, 233 P. 321 (1925).

11 Tex.—Ex parte Faison, 93 Tex. Crim. 403, 248 S.W. 343 (1923); Lossing v. Hughes, 244 S.W. 556 (Tex. Civ. App. Dallas 1922).

12 Minn.—C. Thomas Stores Sales System v. Spaeth, 209 Minn. 504, 297 N.W. 9 (1941).
Pa.—Com. v. Ford Motor Co., 350 Pa. 236, 38 A.2d 329 (1944).
S.C.—Gasque, Inc. v. Nates, 191 S.C. 271, 2 S.E.2d 36 (1939).

13 Ala.—Jackson v. State, 37 Ala. App. 335, 68 So. 2d 850 (1953).
Ill.—Prager v. Glos, 348 Ill. 416, 181 N.E. 310 (1932).
Ind.—Miles v. Department of Treasury, 209 Ind. 172, 199 N.E. 372 (1935).
Ky.—Commonwealth v. Madden's Ex'r, 265 Ky. 684, 97 S.W.2d 561, 107 A.L.R. 1379 (1936).
Minn.—C. Thomas Stores Sales System v. Spaeth, 209 Minn. 504, 297 N.W. 9 (1941).
N.M.—State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943).
Wash.—State v. Inland Empire Refineries, 3 Wash. 2d 651, 101 P.2d 975 (1940).

14 Ala.—Frazier v. State Tax Commission, 234 Ala. 353, 175 So. 402, 110 A.L.R. 1479 (1937).
Cal.—Ex parte Lake, 89 Cal. App. 390, 265 P. 325 (2d Dist. 1928).
Ga.—Milliron v. Harrison, 175 Ga. 764, 166 S.E. 231, 84 A.L.R. 1142 (1932).
Fla.—Gaulden v. Kirk, 47 So. 2d 567 (Fla. 1950).
Ill.—Modern Dairy Co. v. Department of Revenue, 413 Ill. 55, 108 N.E.2d 8 (1952).
Or.—Barnard Motors v. City of Portland, 188 Or. 340, 215 P.2d 667 (1950).
Utah—Davis v. Ogden City, 117 Utah 315, 215 P.2d 616, 16 A.L.R.2d 1208 (1950).
Wash.—Crown Zellerbach Corp. v. State, 45 Wash. 2d 749, 278 P.2d 305 (1954).
Wyo.—Ludwig v. Harston, 65 Wyo. 134, 197 P.2d 252 (1948).

15 Cal.—People v. Ventura Refining Co., 204 Cal. 286, 268 P. 347 (1928).
Fla.—O'Connell v. Kontojohn, 131 Fla. 783, 179 So. 802 (1938).
Mich.—Sullivan v. Graham, 336 Mich. 65, 57 N.W.2d 447 (1953).
Miss.—Sears Roebuck & Co. v. State Bd. of Optometry, 213 Miss. 710, 57 So. 2d 726 (1952).
Wash.—State v. Inland Empire Refineries, 3 Wash. 2d 651, 101 P.2d 975 (1940).

End of Document

16B C.J.S. Constitutional Law § 1251

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

3. Civil Remedies and Procedure

§ 1251. General civil remedies and procedures involving class legislation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2971, 2976, 2985

Laws regulating civil remedies are not objectionable as class legislation if the classifications are reasonable and apply alike to all members of the same class; but an arbitrary classification, operating unequally on members of the same class, renders a statute unconstitutional.

While the legislature must have some reasonable basis for statutory classifications under constitutional requirements, it enjoys great freedom and is afforded great liberality when dealing with remedies and procedures.[1] When unlawful discrimination infects tax classifications or other legislative prescriptions, the Constitution simply calls for equal treatment; how equality is accomplished, by extension or invalidation of the unequally distributed benefit or burden, or some other measure, is a matter on which the Constitution is silent.[2] The legislature may constitutionally provide for the survival of causes of action of a particular kind;[3] prescribe conditions precedent to,[4] or restrictions on,[5] the right to sue in certain cases; prescribe the effect of a judgment in a particular class of cases;[6] and enact a curative act legalizing foreclosure sales theretofore made on execution or order of sale issued upon order or decree before reading thereof in open court.[7]

State statutes are not invalid as class legislation because they exempt certain property from liability for debt,[8] or remove existing exemptions,[9] or subject to liability for certain classes of claims property which under existing law is exempt.[10] The legislature may constitutionally determine the amount of property that shall be exempt and increase or diminish such amount from time to time.[11]

A statute which confers on a particular person or corporation the exclusive right to the use of a certain remedy is void as class legislation.[12]

Other legislation which has been held void as class legislation includes a statute limiting the duration of continuances granted to enable nonresident automobile owners using state highways to defend actions against them;[13] a statute providing a method of drawing juries in counties of a certain population, which includes only three counties, differing from the method prescribed by general law for other parts of the state;[14] and a statute defining the rights of a defendant charged with contempt for violation of an injunction or restraining order, and relating solely to contempts growing out of labor disputes,[15]

Footnotes

1 Tenn.—Norman v. Tennessee State Bd. of Claims, 533 S.W.2d 719 (Tenn. 1975).

2 U.S.—Levin v. Commerce Energy, Inc., 560 U.S. 413, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010).

3 Ind.—Cincinnati, H. & D. Ry. Co. v. McCullom, 183 Ind. 556, 109 N.E. 206 (1915), aff'd, 245 U.S. 632, 38 S. Ct. 64, 62 L. Ed. 521 (1917).

4 Cal.—Huffaker v. Decker, 77 Cal. App. 2d 383, 175 P.2d 254 (3d Dist. 1946).
Fla.—Crumbley v. City of Jacksonville, 102 Fla. 408, 138 So. 486 (1931).
Ind.—Sherfey v. City of Brazil, 213 Ind. 493, 13 N.E.2d 568 (1938).
Mo.—Randolph v. City of Springfield, 302 Mo. 33, 257 S.W. 449, 31 A.L.R. 612 (1923).

5 Minn.—Allen v. Pioneer Press Co., 40 Minn. 117, 41 N.W. 936 (1889).

6 Ohio—Laver v. Canfield, 18 Ohio C.D. 429, 1905 WL 690 (Ohio Cir. Ct. 1905).

7 Ind.—Brant v. Lincoln Nat. Life Ins. Co. of Fort Wayne, 209 Ind. 268, 198 N.E. 785 (1935).

8 Ind.—Spangler v. Bolinger, 216 Ind. 28, 22 N.E.2d 983, 128 A.L.R. 103 (1939).
Wash.—Northern Sav. & Loan Ass'n v. Kneisley, 193 Wash. 372, 76 P.2d 297 (1938).

9 Ind.—Pomeroy v. Beach, 149 Ind. 511, 49 N.E. 370 (1898).

10 Kan.—McBride v. Reitz, 19 Kan. 123, 1877 WL 977 (1877).

11 Minn.—Coleman v. Ballandi, 22 Minn. 144, 1875 WL 3879 (1875).
Tenn.—Frazier v. Nashville Veterinary Hosp., 139 Tenn. 440, 201 S.W. 751 (1918).

12 Ky.—Kentucky Trust Co. v. Lewis, 82 Ky. 579, 6 Ky. L. Rptr. 547, 1885 WL 5755 (1885).
Miss.—Smith's Adm'r v. Smith, 2 Miss. 102, 1 Howard 102, 1834 WL 1161 (1834).

13 U.S.—Jones v. Paxton, 27 F.2d 364 (D. Minn. 1928).

14 Tex.—Randolph v. State, 117 Tex. Crim. 80, 36 S.W.2d 484 (1931).

15 N.H.—In re Opinion of the Justices, 86 N.H. 597, 166 A. 640 (1933).

16B C.J.S. Constitutional Law § 1252

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

3. Civil Remedies and Procedure

§ 1252. Jurisdiction, venue, and limitations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2971, 2976, 2985

Statutes regulating the jurisdiction of courts, the venue of actions, or fixing the time for commencing actions are not invalid as class legislation, but a statute which discriminates between classes of defendants in fixing venue, or exempts a particular person from the operation of a general statute of limitations, is void.

A statute giving certain courts jurisdiction of certain classes of cases only is not invalid as class legislation,[1] and statutes regulating the venue of actions in particular cases or between particular persons[2] are not invalid as class legislation if the classification is reasonable. However, the State in fixing venue cannot unreasonably discriminate between classes of defendants.[3]

The time within which an action by or against particular classes of persons shall be commenced may be fixed by the legislature.[4]

Footnotes

1 Ill.—Chudnovski v. Eckels, 232 Ill. 312, 83 N.E. 846 (1908).
Mich.—Robison v. Wayne Circuit Judges, 151 Mich. 315, 115 N.W. 682 (1908).
Minn.—State v. Juvenile Court of Ramsey County, 147 Minn. 222, 179 N.W. 1006 (1920).
Miss.—Wheeler v. Shoemake, 213 Miss. 374, 57 So. 2d 267 (1952).

2 Cal.—Mono Power Co. v. City of Los Angeles, 33 Cal. App. 675, 166 P. 387 (3d Dist. 1917).

3 Miss.—Clark v. Louisville & N.R. Co., 158 Miss. 287, 130 So. 302 (1930).

4 U.S.—Warnick v. Bethlehem-Fairfield Shipyard, 68 F. Supp. 857 (D. Md. 1946).
Fla.—Coleman v. City of St. Petersburg, 62 So. 2d 409 (Fla. 1953).
Miss.—Barbour v. Williams, 196 Miss. 409, 17 So. 2d 604 (1944).

End of Document

16B C.J.S. Constitutional Law § 1253

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

3. Civil Remedies and Procedure

§ 1253. Process, pleading, and evidence

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2971, 2976, 2985

Statutes regulating the service of process, pleading, and evidence are not invalid as class legislation.

Acts authorizing a particular method of service of process in suits against foreign corporations have been sustained as based on a reasonable distinction.[1]

The legislature may prescribe particular rules of pleading for certain classes of cases[2] and may enact that in certain classes of cases certain facts shall constitute prima facie proof of certain other facts[3] or may prohibit a husband and a wife from being witnesses against each other except in certain actions.[4] Similarly, the legislature may limit the use of ex parte statements by way of impeachment in certain types of cases.[5]

Footnotes

1 Minn.—Spencer v. Court of Honor, 120 Minn. 422, 139 N.W. 815 (1913).

2 Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Blind, 182 Ind. 398, 105 N.E. 483 (1914).

3 Kan.—Missouri Pac. Ry. Co. v. Merrill, 40 Kan. 404, 19 P. 793 (1888).

Miss.—Thigpen v. Mississippi Cent. R. Co., 32 Miss. 347, 1856 WL 2685 (1856).

4 Iowa—Burk v. Putman, 113 Iowa 232, 84 N.W. 1053 (1901).

5 Va.—Robertson v. Com., 181 Va. 520, 25 S.E.2d 352, 146 A.L.R. 966 (1943).

End of Document

16B C.J.S. Constitutional Law § 1254

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

3. Civil Remedies and Procedure

§ 1254. Penalties and damages of class legislation claims

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2971, 2976, 2985

Statutes regulating the recovery of damages in particular classes of cases, if reasonable as to classification, are valid.

Statutes regulating the damages recoverable in particular classes of cases are not invalid as class legislation where the classification is reasonable.[1]

A limitation on damage recovery for certain classes that has a rational basis is not invalid as class legislation.[2] For example, a statute limiting the recovery of noneconomic damages in products liability actions did not arbitrarily distinguish between plaintiffs bringing products liability actions and plaintiffs bringing negligence actions and thus did not violate state constitutional prohibition against class legislation.[3]

Footnotes

1 Ill.—Scherzer v. Keller, 321 Ill. 324, 151 N.E. 915 (1926).

Ind.—Thompson v. State, 425 N.E.2d 167 (Ind. Ct. App. 1981).

2 Mich.—Kenkel v. Stanley Works, 256 Mich. App. 548, 665 N.W.2d 490 (2003).

3 Mich.—Kenkel v. Stanley Works, 256 Mich. App. 548, 665 N.W.2d 490 (2003).

End of Document

16B C.J.S. Constitutional Law § 1255

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XV. Privileges and Immunities of Citizens and Related Matters

D. Class Legislation

3. Civil Remedies and Procedure

§ 1255. Costs and fees; review of class legislation claims

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2971, 2976, 2985

Statutes regulating costs and attorney's fees in particular classes of cases and statutes regulating the right of appeal in particular classes of cases are not invalid as class legislation.

A statute which attempts to prescribe a special rule as to costs in suits by or against a particular person or corporation is void.[1] Some authorities hold that a statute is void as class legislation which attempts to prescribe particular rules for the allowance of costs and attorney's fees against particular classes of persons in particular classes of cases.[2] Other authorities adhere to the view that different rules may be prescribed in different classes of cases for the allowance of such costs and fees.[3]

Some authorities have held that a statute prescribing a special rule for costs on appeal in particular classes of cases is void[4] while other authorities have upheld such statutes.[5]

The right of appeal in different classes of cases is largely within the control of the legislature.[6]

Footnotes

1 Wis.—Durkee v. City of Janesville, 28 Wis. 464, 1871 WL 2939 (1871).

2 Miss.—Sorenson v. Webb, 111 Miss. 87, 71 So. 273 (1916).

3 U.S.—Dohany v. Rogers, 281 U.S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A.L.R. 434 (1930).
Cal.—Sacramento Municipal Utility Dist. v. Pacific Gas & Elec. Co., 20 Cal. 2d 684, 128 P.2d 529 (1942).
Iowa—Welton v. Iowa State Highway Com'n, 211 Iowa 625, 233 N.W. 876 (1930).

4 Ohio—Rowland v. Baltimore & O. Ry., 22 Ohio C.D. 91, 1910 WL 1173 (Ohio Cir. Ct. 1910).

5 N.D.—Investors' Syndicate v. Pugh, 25 N.D. 490, 142 N.W. 919 (1913).
Wis.—Harrigan v. Gilchrist, 121 Wis. 127, 99 N.W. 909 (1904).

6 Ill.—Freitag v. Union Stock Yard & Transit Co., 262 Ill. 551, 104 N.E. 901 (1914).
Tenn.—Kentucky-Tennessee Light & Power Co. v. Dunlap, 181 Tenn. 105, 178 S.W.2d 636 (1944).

End of Document

16B C.J.S. Constitutional Law VI XVI Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
West's A.L.R. Digest, Constitutional Law 3000, 3006, 3007, 3020 to 3027, 3033 to 3037, 3041, 3043, 4850, 4854, 4855, 4857

End of Document

16B C.J.S. Constitutional Law VI XVI A Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
West's A.L.R. Digest, Constitutional Law 3000, 3006, 3007, 3020 to 3027, 3033 to 3037, 3041, 3043, 4850, 4854, 4855, 4857

End of Document

16B C.J.S. Constitutional Law § 1256

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1256. Guaranties under Federal Constitution

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3007, 3033 to 3037, 3041, 3043, 4850, 4854, 4855, 4857

By virtue of a clause of the Fourteenth Amendment to the Federal Constitution forbidding any state to deny to any person within its jurisdiction the equal protection of the laws, all persons subjected to state legislation must be treated alike under like circumstances.

By virtue of a clause in the Fourteenth Amendment of the Constitution of the United States expressly forbidding it to do so, a state may not deny to any person within its jurisdiction the equal protection of the laws.[1] This clause is a pledge of equal protection of laws[2] or protection of equal laws.[3] The purpose of the Equal Protection Clause is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through duly constituted agents.[4] It means, and is a guarantee, that all persons subjected to state legislation shall be treated alike, under like circumstances and conditions, both in privileges conferred and in liabilities imposed.[5] Equal protection is the law's keystone; without careful attention to equal protection's demands, the integrity of surrounding law all too often erodes, sometimes to the point where it becomes little more than a tool of majoritarian oppression.[6]

In other words, equal protection merely requires that persons similarly situated be treated alike[7] with respect to a legitimate governmental purpose.[8] The clause guarantees the protection enjoyed by other persons or classes in the same place and under like circumstances.[9]

The Equal Protection Clause is intended as a restriction on state legislative action which is inconsistent with elemental constitutional premises.[10] The fundamental purpose of the Fourteenth Amendment was the eradication of slavery and racial discrimination.[11]

The clause is intended to secure and safeguard equality of right and of treatment against intentional and arbitrary discrimination[12] and to work nothing less than the abolition of all caste and invidious class-based legislation.[13] The Equal Protection Clause does not forbid classifications; it simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.[14] The function of the clause is to measure the validity of classifications created by state laws.[15]

The constitutional demand of the Equal Protection Clause is not a demand that a statute necessarily apply exactly equally to all classes or persons,[16] nor is it designed to guarantee uniformity or unanimity.[17] It does not require that things which are different in fact be treated as though they were the same,[18] and thus, does not require that all persons be dealt with identically;[19] exact or perfect equality is not a prerequisite of equal protection of the laws.[20] The equality guaranteed and required by the Equal Protection Clause is equality of right and not of enjoyment;[21] and discrimination in the grant of mere favors or privileges is not a denial of equal protection.[22] However, constitutional equality applies with equal vigor to privileges as well as to rights.[23]

Similarly situated.

In order to successfully raise an equal protection challenge, one first must show that he or she is similarly situated to those who he alleges receive different treatment.[24]

The equal protection provision of the Fourteenth Amendment operates only on legal rights otherwise created or existing and does not itself create any new legal rights.[25]

The extent of a state's lawmaking power under the Equal Protection Clause is large,[26] and the clause allows wide latitude in effecting policies in areas of general welfare,[27] including economic, social,[28] and moral welfare.[29] It is not the province of the judiciary to create substantive constitutional rights in the name of guaranteeing equal protection of the laws,[30] but in requiring an end to an alleged equal protection violation, the court may consider relative financial as well as social costs in weighing alternative approaches to a solution.[31] The equal protection right is not an abstract right but is a command which the State must respect.[32]

An equal protection claim that a state actor discriminated on the basis of a suspect, quasi-suspect, or a nonsuspect classification calls for strict,[33] intermediate,[34] or rational basis scrutiny,[35] respectively, but in each instance, to assert a viable claim, plaintiffs must first make a threshold showing that they were treated differently from others who were similarly situated to them.[36]

CUMULATIVE SUPPLEMENT

Cases:

The equal protection clauses of both the Federal and State Constitutions require that similarly situated individuals be treated alike under the law unless there is a reasonable basis for treating them differently. U.S. Const. Amend. 14, § 1; Utah Const. art. 1, § 2. Met v. State, 2016 UT 51, 388 P.3d 447 (Utah 2016).

[END OF SUPPLEMENT]

Footnotes

1 Ariz.—Hecla Min. Co. v. Department of Revenue, 130 Ariz. 83, 634 P.2d 10 (Ct. App. Div. 2 1981).
N.J.—Chester Borough v. World Challenge, Inc., 14 N.J. Tax 20, 1994 WL 380720 (1994).

2 Okla.—Rivas v. Parkland Manor, 2000 OK 68, 12 P.3d 452 (Okla. 2000).

3 U.S.—Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996); Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); Hines v. Davidowitz, 312 U.S. 52, 61 S. Ct. 399, 85 L. Ed. 581 (1941).
N.Y.—People v. Lofton, 81 Misc. 2d 572, 366 N.Y.S.2d 769 (Sup 1975).

4 U.S.—Sadie v. City of Cleveland, 718 F.3d 596 (6th Cir. 2013); Dixon v. University of Toledo, 702 F.3d 269, 288 Ed. Law Rep. 17 (6th Cir. 2012), cert. denied, 134 S. Ct. 119, 187 L. Ed. 2d 37 (2013); U.S. v. Green, 654 F.3d 637 (6th Cir. 2011); Rinker v. Sipler, 264 F. Supp. 2d 181, 178 Ed. Law Rep. 730 (M.D. Pa. 2003); Broadwell v. Municipality of San Juan, 312 F. Supp. 2d 132 (D.P.R. 2004).
Alaska—State, Dept. of Natural Resources v. Alaska Riverways, Inc., 232 P.3d 1203 (Alaska 2010).
Kan.—In re City of Wichita, 274 Kan. 915, 59 P.3d 336 (2002).
N.Y.—Weaver v. Town of Rush, 1 A.D.3d 920, 768 N.Y.S.2d 58 (4th Dep't 2003).

5 U.S.—State of La. ex rel. Francis v. Resweber, 329 U.S. 459, 67 S. Ct. 374, 91 L. Ed. 422 (1947); Smith v. State of Texas, 311 U.S. 128, 61 S. Ct. 164, 85 L. Ed. 84 (1940).
Iowa—Judicial Branch, State Court Adm'r v. Iowa Dist. Court For Linn County, 800 N.W.2d 569 (Iowa 2011).
Pa.—Hospital & Healthsystem Ass'n of Pa. v. Com., 621 Pa. 260, 77 A.3d 587 (2013).
Wyo.—Reiter v. State, 2001 WY 116, 36 P.3d 586 (Wyo. 2001).

6 U.S.—SECSYS, LLC v. Vigil, 666 F.3d 678 (10th Cir. 2012).

7 U.S.—Congregation Kol Ami v. Abington Township, 309 F.3d 120 (3d Cir. 2002); Minnesota Majority v. Mansky, 708 F.3d 1051 (8th Cir. 2013), cert. denied, 134 S. Ct. 824 (2013); Holmes v. California Army Nat. Guard, 124 F.3d 1126 (9th Cir. 1997).
Cal.—People v. Tuck, 204 Cal. App. 4th 724, 139 Cal. Rptr. 3d 407 (1st Dist. 2012).
Ga.—Nicely v. State, 291 Ga. 788, 733 S.E.2d 715 (2012).

8 U.S.—Chrysler Rail Transp. Corp. v. Holt, 845 F. Supp. 463 (W.D. Mich. 1994).
Mont.—Rausch v. State Compensation Ins. Fund, 2005 MT 140, 327 Mont. 272, 114 P.3d 192 (2005).

9 Me.—Mills v. State of Me., 118 F.3d 37 (1st Cir. 1997).
Ohio—In re Lovejoy, 65 Ohio Misc. 2d 11, 640 N.E.2d 620 (C.P. 1994).
Tex.—Click v. State, 745 S.W.2d 480 (Tex. App. Corpus Christi 1988), petition for discretionary review refused, (May 25, 1988).

10 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

11 Wash.—Kennebec, Inc. v. Bank of the West, 88 Wash. 2d 718, 565 P.2d 812 (1977).
As to equal protection as applied to discrimination by reason of race, generally, see §§ 1280 to 1283.

12 U.S.—Beauharnais v. People of State of Ill., 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).
Mont.—Godfrey v. Montana State Fish & Game Commission, 193 Mont. 304, 631 P.2d 1265 (1981).
Selective enforcement
The constitutional basis for objecting to selective enforcement of the laws is the Equal Protection Clause of the Fourteenth Amendment, not the Fourth Amendment.

Ariz.—Jones v. Sterling, 210 Ariz. 308, 110 P.3d 1271 (2005).

Nature of discrimination

The constitution forbids sophisticated as well as simple-minded modes of discrimination.

U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

13 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

14 U.S.—Analytical Diagnostic Labs, Inc. v. Kusel, 626 F.3d 135 (2d Cir. 2010); Taylor v. Roswell Independent School Dist., 713 F.3d 25, 292 Ed. Law Rep. 22 (10th Cir. 2013).

Neb.—State v. Harris, 284 Neb. 214, 817 N.W.2d 258 (2012).

Utah—Petersen v. Riverton City, 2010 UT 58, 243 P.3d 1261 (Utah 2010).

15 U.S.—Parham v. Hughes, 441 U.S. 347, 99 S. Ct. 1742, 60 L. Ed. 2d 269 (1979); Barcume v. City of Flint, 638 F. Supp. 1230 (E.D. Mich. 1986).

Mont.—ISC Distributors, Inc. v. Trevor, 273 Mont. 185, 903 P.2d 170 (1995).

Neb.—Snyder v. IBP, Inc., 229 Neb. 224, 426 N.W.2d 261 (1988).

16 U.S.—Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1966).

Del.—Petitioner F. v. Respondent R., 430 A.2d 1075 (Del. 1981).

Crucial question

The crucial question in equal protection cases is whether there is an appropriate governmental interest suitably furthered by differential treatment.

U.S.—Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972).

Economic equality

The right to equal protection does not promise or guarantee economic or financial equality.

N.C.—Barnhill Sanitation Service, Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987).

Equal results unnecessary

The Fourteenth Amendment guarantees equal laws, not equal results.

U.S.—Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); Bell v. U.S., 754 F.2d 490 (3d Cir. 1985); Cook v. Babbitt, 819 F. Supp. 1 (D.D.C. 1993).

Tex.—Ho v. University of Texas at Arlington, 984 S.W.2d 672, 132 Ed. Law Rep. 560 (Tex. App. Amarillo 1998).

17 Ala.—State v. Spurlock, 393 So. 2d 1052 (Ala. Crim. App. 1981).

18 U.S.—Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1966); Lindsay v. Bowen, 750 F.3d 1061 (9th Cir. 2014).

Cal.—People v. Guzman, 35 Cal. 4th 577, 25 Cal. Rptr. 3d 761, 107 P.3d 860 (2005).

Kan.—Kansas One-Call System, Inc. v. State, 294 Kan. 220, 274 P.3d 625 (2012).

La.—State v. Cooper, 50 So. 3d 115 (La. 2010).

N.H.—In re Sandra H., 150 N.H. 634, 846 A.2d 513 (2004).

19 U.S.—Norvell v. State of Ill., 373 U.S. 420, 83 S. Ct. 1366, 10 L. Ed. 2d 456 (1963); Mlikotin v. City of Los Angeles, 643 F.2d 652 (9th Cir. 1981).

Haw.—Child Support Enforcement Agency v. Doe, 104 Haw. 449, 91 P.3d 1092 (Ct. App. 2004).

Kan.—State v. Van Hoet, 277 Kan. 815, 89 P.3d 606 (2004).

Mathematical precision not required

N.Y.—Allen v. Howe, 84 N.Y.2d 665, 621 N.Y.S.2d 287, 645 N.E.2d 720 (1994).

20 U.S.—Ross v. Moffitt, 417 U.S. 600, 94 S. Ct. 2437, 41 L. Ed. 2d 341 (1974); Childs v. Duckworth, 509 F. Supp. 1254 (N.D. Ind. 1981), judgment aff'd, 705 F.2d 915 (7th Cir. 1983).

Alaska—Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

21 Mo.—Jacobs v. Leggett, 295 S.W.2d 825 (Mo. 1956).The Fourteenth Amendment guarantees equal laws, not equal results.

U.S.—Doe ex rel. Doe v. Lower Merion School Dist., 665 F.3d 524, 275 Ed. Law Rep. 526 (3d Cir. 2011).

22 Ga.—Woodard v. Laurens County, 265 Ga. 404, 456 S.E.2d 581 (1995).

23 Fla.—ABC Liquors, Inc. v. City of Ocala, 366 So. 2d 146 (Fla. 1st DCA 1979).

24 Cal.—Chan v. Judicial Council of California, 199 Cal. App. 4th 194, 131 Cal. Rptr. 3d 32 (2d Dist. 2011).

Essence of equal protection claim

The essence of an equal protection claim is that two groups, similarly situated with respect to the law in question, are treated differently.

Cal.—Grossmont Union High School Dist. v. California Dept. of Educ., 169 Cal. App. 4th 869, 86 Cal. Rptr. 3d 890, 240 Ed. Law Rep. 307 (3d Dist. 2008).

Minn.—State v. Cox, 798 N.W.2d 517 (Minn. 2011).

Mo.—Coyne v. Edwards, 395 S.W.3d 509 (Mo. 2013).

25 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982).

26 U.S.—Romiti v. Kerner, 256 F. Supp. 35 (N.D. Ill. 1966).

Congressional implementation of equal protection guaranty, see § 1257.

27 Ill.—Buell v. Oakland Fire Protection Dist. Bd., 237 Ill. App. 3d 940, 178 Ill. Dec. 824, 605 N.E.2d 618 (4th Dist. 1992).

28 U.S.—Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995); Americans United for Separation of Church and State v. Bubb, 379 F. Supp. 872 (D. Kan. 1974).

29 U.S.—Schanuel v. Anderson, 708 F.2d 316 (7th Cir. 1983).

30 U.S.—City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980).

31 Cal.—Inmates of Sybil Brand Institute for Women v. County of Los Angeles, 130 Cal. App. 3d 89, 181 Cal. Rptr. 599 (2d Dist. 1982).

32 U.S.—Hill v. State of Tex., 316 U.S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559 (1942).

33 § 1277.

34 § 1278.

35 § 1279.

36 U.S.—Brown v. Montoya, 662 F.3d 1152 (10th Cir. 2011).

End of Document

16B C.J.S. Constitutional Law § 1257

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1257. Guaranties under Federal Constitution—Congressional implementation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3007, 3033 to 3037, 3041, 3043, 4850, 4854, 4855, 4857

The enforcement clause of the Fourteenth Amendment states that Congress may enforce, by appropriate legislation, the constitutional guarantee that no state shall deprive any person of life, liberty, or property, without due process of law, nor deny any person equal protection of the laws.

The enforcement clause of the Fourteenth Amendment states that Congress may enforce, by appropriate legislation, the constitutional guarantee that no state shall deprive any person of life, liberty, or property, without due process of law, nor deny any person equal protection of the laws.[1] The power to enforce under the Enforcement Clause of the Fourteenth Amendment includes the authority both to remedy and to deter violations of rights guaranteed by the first section of the Fourteenth Amendment, which, inter alia, prohibits states from depriving persons of life, liberty, or property without due process of law.[2] Under section five of the Fourteenth Amendment, Congress has broad power to pass appropriate legislation to implement the dictates of the Equal Protection Clause.[3] In fact, such implementing legislation may reach more broadly than the Equal Protection Clause itself.[4] Therefore, legislation authorized by the enforcement clause can prohibit practices which would pass muster under the Equal Protection Clause, absent an act of Congress.[5]

The enforcement clause is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guaranties of the Fourteenth Amendment,[6] but the power of Congress under such clause is limited to adopting measures to enforce the guaranties contained therein, and Congress is granted no power to restrict, abrogate, or dilute these guaranties.[7] The scope of Congress's power under the enforcement clause is equivalent to,[8] or at least no less broad than,[9] that under the necessary and proper clause, and the standard for measuring what constitutes appropriate legislation under the enforcement clause of the Fourteenth Amendment is delineated in the rule that all means which are appropriate, which are plainly adapted to a legitimate end, and which are not prohibited, but are consistent with the letter and spirit of the Constitution, are constitutional.[10]

The Supreme Court presumes that federal statutes do not impose obligations on the states pursuant to the Enforcement Clause of the Fourteenth Amendment.[11]

Footnotes

1 U.S.—U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000).

2 U.S.—Coleman v. Court of Appeals of Maryland, 132 S. Ct. 1327, 182 L. Ed. 2d 296 (2012) (Per Justice Kennedy, with three Justices concurring and one Justice concurring in result.)

3 U.S.—E.E.O.C. v. Elrod, 674 F.2d 601 (7th Cir. 1982).
Enforcement
The Equal Protection Clause of the Fourteenth Amendment is not self-enforcing but requires application through some legislative act.
Iowa—Van Baale v. City of Des Moines, 550 N.W.2d 153 (Iowa 1996).

4 U.S.—Vineyard v. Hollister Elementary School Dist., 64 F.R.D. 580, 19 Fed. R. Serv. 2d 507 (N.D. Cal. 1974).

5 U.S.—Arritt v. Grisell, 567 F.2d 1267 (4th Cir. 1977).

6 U.S.—Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).

7 U.S.—Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966); U.S. E. E. O. C. v. Calumet County, 686 F.2d 1249 (7th Cir. 1982).

8 U.S.—E.E.O.C. v. Elrod, 674 F.2d 601 (7th Cir. 1982).

9 U.S.—U.S. v. Marengo County Com'n, 731 F.2d 1546 (11th Cir. 1984).

10 U.S.—Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 LED 2d 828 (1966); E.E.O.C. v. Elrod, 674 F.2d 601 (7th Cir. 1982).

11 U.S.—Bond v. U.S., 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014).

16B C.J.S. Constitutional Law § 1258

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1258. Guaranties under state constitutions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3007, 3033 to 3037, 3041, 3043, 4850, 4854, 4855, 4857

Equal Protection Clauses in certain state constitutions have generally been construed identically or consistent with their federal counterpart.

Equal protection clauses in certain state constitutions have been construed as articulating the same principle contained in the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and thus have been construed identically or consistent with their federal counterpart.[1] However, while certain state equal protection provisions contain substantially the equivalent equal protection guaranties contained in the Fourteenth Amendment, nevertheless, such provisions are possessed of an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were applicable;[2] and state guaranties of equal protection may be more demanding or more broadly construed than those of the Federal Constitution.[3]

Standards used in determining whether a legislative enactment violates the Equal Protection Clause are similar to those involved in determining whether such enactment violates a special legislation provision of a state constitution;[4] although it has been held that the Equal Protection Clause of the Federal Constitution and a section of a state constitution prohibiting special privilege legislation were adopted to serve distinctly different identifiable purposes.[5] Thus, some courts have held that, while analysis

under a special legislation inquiry focuses on the legislature's purpose in creating the class and asks if there is a substantial difference of circumstances to suggest the expediency of diverse legislation, under an equal protection analysis, the state interest in legislation is compared to the statutory means selected by the legislature to accomplish that purpose.[6] Where a state constitution contains no express equal protection clause, the concept of equal protection is embodied in the due process clause.[7]

CUMULATIVE SUPPLEMENT

Cases:

Although the phrase "equal protection" is not used in the provision of the Minnesota Constitution prohibiting the disfranchisement or deprivation of any of the rights or privileges secured to any state citizen, the Minnesota Constitution embodies principles of equal protection synonymous to the equal protection clause of the Fourteenth Amendment to the United States Constitution. U.S. Const. Amend. 14; Minn. Const. art. 1, § 2. Walker v. Hartford Life and Accident Insurance Company, 831 F.3d 968 (8th Cir. 2016).

Equal protection embraces the principle that all persons in like circumstances should receive the same benefits and burdens of the law. U.S. Const. Amend. 14; Idaho Const. art. 1, § 1. Interest of Doe, 438 P.3d 769 (Idaho 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Local Union No. 35 of Intern. Broth. of Elec. Workers v. City of Hartford, 625 F.2d 416 (2d Cir. 1980); Huff v. White Motor Corp., 609 F.2d 286, 4 Fed. R. Evid. Serv. 1185 (7th Cir. 1979); Minnetonka Moorings, Inc. v. City of Shorewood, 367 F. Supp. 2d 1251 (D. Minn. 2005).
Ga.—Bell v. Austin, 278 Ga. 844, 607 S.E.2d 569 (2005).
Mont.—Ward v. Johnson, 2012 MT 96, 365 Mont. 19, 277 P.3d 1216 (2012).
Neb.—In re Interest of A.M., Jr., 281 Neb. 482, 797 N.W.2d 233 (2011).
Wash.—Gausvik v. Abbey, 126 Wash. App. 868, 107 P.3d 98 (Div. 2 2005).

2 Cal.—Deronde v. Regents of University of California, 28 Cal. 3d 875, 172 Cal. Rptr. 677, 625 P.2d 220 (1981).

3 Alaska—Stanek v. Kenai Peninsula Borough, 81 P.3d 268 (Alaska 2003).
Greater protection to individual rights
A state constitution's version of the equal protection clause may be construed to provide greater protection to individual rights than that provided by Equal Protection Clause of the United States Constitution.
Alaska—Malabed v. North Slope Borough, 70 P.3d 416 (Alaska 2003).

4 Ill.—In re Estate of Jolliff, 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346 (2002).
Sliding scale
In analyzing a challenged law under the state constitution's equal protection provision, the Supreme Court first determines what level of scrutiny to apply, using a "sliding scale" standard; the weight that should be afforded the constitutional interest impaired by the challenged enactment is the most important variable in fixing the appropriate level of review.
Alaska—Heller v. State, Dept. of Revenue, 314 P.3d 69 (Alaska 2013).
State constitutional provisions precluding special legislation or privileges as compared to equal protection provisions, see § 1208.

5 Idaho—Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976).

6 Neb.—Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc., 265 Neb. 918, 663 N.W.2d 43 (2003).

7 Md.—Ashton v. Brown, 339 Md. 70, 660 A.2d 447 (1995).

Common Benefits Clause

In order for a plaintiff to bring constitutional-tort claim based on a violation of Common Benefits Clause, plaintiff must show the denial of a common benefit; in doing so, the plaintiff must show disparate and arbitrary treatment when compared to others similarly situated.

Vt.—In re Town Highway No. 20, 191 Vt. 231, 2012 VT 17, 45 A.3d 54 (2012).

End of Document

16B C.J.S. Constitutional Law § 1259

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1259. Persons protected

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010, 3011, 3013 to 3015

As long as they are physically present in the state, all persons, regardless of station or condition, are entitled to the equal protection of the laws of that state.

Provided they are physically within the territorial jurisdiction of the state in question,[1] all persons are, under the constitutional guaranty, entitled to the equal protection of the laws of that state.[2] Whether one is a natural person or artificial person, states cannot deny equal protection to either.[3] Persons entitled to equal protection include women,[4] children,[5] prisoners,[6] and Indians residing in Indian country as citizens of the state;[7] they also include citizens of other states.[8]

The word "person" as used in the Equal Protection Clause of the Fourteenth Amendment,[9] and as similarly used in a state constitution,[10] does not include the unborn.Nor does the term "person" include groups.[11]

State; subdivisions or agencies thereof.

The state is not a "person" and is not protected against its own acts by the constitutional prohibition of denial of equal protection of the laws.[12] The prohibition is not intended to hamper the states in the discretionary exercise of their appropriate sovereign governmental powers unless substantial private rights are arbitrarily invaded.[13] Furthermore, a subdivision of a state, such as a municipality, county, or other public corporation or governmental agency created and controlled by the state, is not a "person" entitled, as against the state, to the equal protection of the laws.[14]

Footnotes

1 U.S.—River Vale Tp. v. Town of Orangetown, 403 F.2d 684 (2d Cir. 1968).
"Within its jurisdiction"
Congressional debate concerning the Equal Protection Clause confirms understanding that the phrase "within its jurisdiction" was intended in a broad sense to offer a guaranty of equal protection to all within the state's boundaries and to all upon whom the state would impose obligations of its laws.
U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

2 U.S.—Torao Takahashi v. Fish and Game Commission, 334 U.S. 410, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948); Hurd v. Hodge, 334 U.S. 24, 68 S. Ct. 847, 92 L. Ed. 1187 (1948); Moreno v. Henckel, 431 F.2d 1299 (5th Cir. 1970).
Individuals
The Equal Protection Clause of the Fourteenth Amendment establishes personal rights.
Haw.—Rice v. Cayetano, 941 F. Supp. 1529 (D. Haw. 1996).
Residents of Puerto Rico
U.S.—Rivas Tenorio v. Liga Atletica Interuniversitaria, 554 F.2d 492 (1st Cir. 1977).
College athlete eligibility
A National Collegiate Athletic Association (NCAA) rule requiring student athletes to participate in certain basic core classes in high school was rationally related to the end it attempted to achieve, ensuring that incoming student athletes were prepared to balance academics and athletics, and thus, application of that rule by NCAA and universities to deny athletic eligibility to student who had not completed the necessary core classes because he took the majority of his high school classes in a special education setting due to his learning disability did not violate the Equal Protection Clause.
U.S.—Bowers v. National Collegiate Athletic Ass'n, 475 F.3d 524, 216 Ed. Law Rep. 37 (3d Cir. 2007), amended on reh'g, (Mar. 8, 2007).

3 Tenn.—State v. Sowder, 826 S.W.2d 924 (Tenn. Crim. App. 1991).

4 U.S.—Schattman v. Texas Employment Commission, 459 F.2d 32 (5th Cir. 1972).
Equal protection as applicable to sex discrimination, generally, see §§ 1298 to 1315.

5 Ill.—In re D.W., 214 Ill. 2d 289, 292 Ill. Dec. 937, 827 N.E.2d 466 (2005).
N.J.—Martinez v. Martinez, 282 N.J. Super. 332, 660 A.2d 13 (Ch. Div. 1995).
§ 1585.
Children born out of wedlock
Haw.—Kau Agribusiness Co., Inc. v. Heirs or Assigns of Ahulau, 105 Haw. 182, 95 P.3d 613 (2004), as amended, (Sept. 2, 2004).

6 U.S.—Bourdon v. Loughren, 386 F.3d 88 (2d Cir. 2004); Garcia v. Dretke, 388 F.3d 496 (5th Cir. 2004); Abney v. Alameida, 334 F. Supp. 2d 1221 (S.D. Cal. 2004); Wilson v. Schomig, 863 F. Supp. 789 (N.D. Ill. 1994); Coleman v. Martin, 363 F. Supp. 2d 894 (E.D. Mich. 2005).
N.Y.—Jarrett v. Westchester County Dept. of Health, 166 Misc. 2d 777, 638 N.Y.S.2d 269 (Sup 1995).
Equal protection as applicable to discrimination against prisoners, generally, see §§ 1358 to 1364.

7 U.S.—Kahawaiolaa v. Norton, 386 F.3d 1271 (9th Cir. 2004).
§ 1595.

8 U.S.—Blake v. McClung, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898); Hayes v. Board of Regents of Kentucky State University, 495 F.2d 1326 (6th Cir. 1974); Tayyari v. New Mexico State University, 495 F. Supp. 1365 (D.N.M. 1980).

9 U.S.—Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997).

Tex.—Sosebee v. Hillcrest Baptist Medical Center, 8 S.W.3d 427 (Tex. App. Waco 1999).

10 N.C.—Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980), aff'd in part, rev'd in part on other grounds, 302 N.C. 357, 275 S.E.2d 439 (1981).

Tex.—Sosebee v. Hillcrest Baptist Medical Center, 8 S.W.3d 427 (Tex. App. Waco 1999).

11 U.S.—Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701, 127 S. Ct. 2738, 168 L. Ed. 2d 508, 220 Ed. Law Rep. 84 (2007).

12 U.S.—Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976); State of La. ex rel. Guste v. Verity, 681 F. Supp. 1178 (E.D. La. 1988), judgment aff'd, 850 F.2d 211 (5th Cir. 1988), opinion issued, 853 F.2d 322 (5th Cir. 1988).

13 La.—Bartels v. Roussel, 303 So. 2d 833 (La. Ct. App. 1st Cir. 1974), writ denied, 307 So. 2d 372 (La. 1975).

14 U.S.—Reeder v. Kansas City Bd. of Police Com'rs, 796 F.2d 1050 (8th Cir. 1986); Hawkins v. Johanns, 88 F. Supp. 2d 1027, 143 Ed. Law Rep. 169 (D. Neb. 2000).

Ariz.—Trust v. County of Yuma, 205 Ariz. 272, 69 P.3d 510 (Ct. App. Div. 1 2003).

La.—Louisiana Assessors' Retirement Fund v. City of New Orleans, 849 So. 2d 1227 (La. 2003).

Mass.—Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 844 N.E.2d 623 (2006).

School district

N.J.—Stubaus v. Whitman, 339 N.J. Super. 38, 770 A.2d 1222, 153 Ed. Law Rep. 681 (App. Div. 2001).

Ohio—Avon Lake City School Dist. v. Limbach, 35 Ohio St. 3d 118, 518 N.E.2d 1190, 44 Ed. Law Rep. 1300 (1988).

End of Document

16B C.J.S. Constitutional Law § 1260

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1260. Persons protected—Class of one

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010, 3011, 3013 to 3015

To raise a "class of one" Equal Protection claim, the plaintiff must show that he has been intentionally treated differently from others similarly situated and that there is no rational basis for difference in treatment.

The "class of one doctrine" focuses on discrimination not between classes or groups of persons, as "traditional" equal protection doctrine does, but on discrimination against a specific individual.[1]

To establish "class of one" equal protection claim, plaintiff must show that he has been intentionally treated differently from others similarly situated and that there is no rational basis for difference in treatment.[2]

Under a "class-of-one theory," plaintiff raising claims that his equal protection rights were violated must show: (1) that he has been intentionally treated differently from others similarly situated, and (2) that there is no rational basis for the difference in treatment.[3] Plaintiffs must overcome a heavy burden to show that they are treated differently than those similarly situated in all material respects in order to prevail on an equal protection claim under the class-of-one theory.[4]

A class-of-one equal protection claim does not extend to cases where the rules are uniformly applicable and a state official exercises his discretionary authority based on subjective, individualized determinations[5] but must allege that the plaintiff was singled out arbitrarily, without rational basis, for unfair treatment.[6]

CUMULATIVE SUPPLEMENT

Cases:

Owner of towing business could not maintain "class-of-one" equal protection claim against city in connection with city's suspension of his towing permit, which resulted in owner's removal from city's non-consent tow rotation list; given that city had discretion to choose from whom it contracted private services based on factors that were not reasonably measurable, it also had the discretion to choose when to terminate such a relationship. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983. Rountree v. Dyson, 892 F.3d 681 (5th Cir. 2018).

Class-of-one equal protection claimant must show not just that they were treated differently than others outside of their class, but that, in comparison to those outside their class, they were similarly situated in all relevant respects. U.S. Const. Amend. 14. Anders v. Cuevas, 984 F.3d 1166 (6th Cir. 2021).

If the plaintiff and a comparator share the relevant characteristic, then differential treatment may suggest an impermissible motive, as may support a class-of-one equal protection claim. U.S. Const. Amend. 14. Frederickson v. Landeros, 943 F.3d 1054 (7th Cir. 2019).

A class-of-one equal protection claim is based on the principle that similarly situated people must be treated alike unless there is a rational basis for treating them differently. U.S. Const. Amend. 14. Chicago Studio Rental, Incorporated v. Illinois Department of Commerce, 940 F.3d 971 (7th Cir. 2019).

Class-of-one theory of equal protection did not apply to village firefighter's allegation that village terminated his employment in arbitrary and irrational manner; village's subjective personnel decision was an exercise of the broad discretion that typically characterized the employer-employee relationship. U.S. Const. Amend. 14. Cannici v. Village of Melrose Park, 885 F.3d 476 (7th Cir. 2018).

"Class of one" equal protection claims are difficult to prove, as the plaintiff bears a substantial burden to show that others similarly situated in all material respects were treated differently and that there is no objectively reasonable basis for the defendant's action; it is therefore imperative for the class-of-one plaintiff to provide a specific and detailed account of the nature of the preferred treatment of the favored class. U.S. Const.Amend. 14. Zia Shadows, L.L.C. v. City of Las Cruces, 829 F.3d 1232 (10th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—SECSYS, LLC v. Vigil, 666 F.3d 678 (10th Cir. 2012).

2 U.S.—Snyder v. Gaudet, 756 F.3d 30 (1st Cir. 2014); Warren v. City of Athens, Ohio, 411 F.3d 697, 2005 FED App. 0261P (6th Cir. 2005); Fares Pawn, LLC v. Indiana Dept. of Financial Institutions, 755 F.3d 839 (7th Cir. 2014); Solum v. Board of County Com'rs for County of Houston, 880 F. Supp. 2d 1008 (D. Minn. 2012).

3 U.S.—Fares Pawn, LLC v. Indiana Dept. of Financial Institutions, 755 F.3d 839 (7th Cir. 2014); Lee v. Connecticut, 427 F. Supp. 2d 124 (D. Conn. 2006); HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010).

4 U.S.—Loesel v. City of Frankenmuth, 692 F.3d 452 (6th Cir. 2012), cert. denied, 133 S. Ct. 878, 184 L. Ed. 2d 660 (2013) and cert. denied, 133 S. Ct. 904, 184 L. Ed. 2d 660 (2013).

5 U.S.—Novotny v. Tripp County, S.D., 664 F.3d 1173 (8th Cir. 2011).

6 U.S.—Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010).

End of Document

16B C.J.S. Constitutional Law § 1261

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1261. Persons protected—Corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010 to 3013

Equal protection of the laws of a state extends to a private corporation, either domestic or foreign, when it is within the jurisdiction of that state, such corporation being regarded as a "person."

A private corporation, being a "person," is, when within the jurisdiction of a state, entitled to the equal protection of its laws[1] and to equal protection under the Federal Constitution.[2] Furthermore, a foreign corporation is a "person" within the meaning of the Equal Protection of the Laws Clause of the Fourteenth Amendment of the Federal Constitution,[3] not an alien, which term refers to non-United States citizenship,[4] and is entitled to the protection of the laws of a state when it is within the jurisdiction of that state.[5] It is within the jurisdiction of a state, so as to be entitled to the equal protection of its laws, when it has been allowed to come into the state and authorized or permitted to carry on its business there.[6]

Conversely, a foreign corporation which is not doing, but is merely seeking to do, business in a state and has not been granted permission for this purpose is held not to be in a position to complain that it is denied equal protection of law by any statute of the state, including the statute imposing conditions on the granting of permission to do business in the state.[7] However, there is authority for the proposition that a foreign corporation which is not engaged in business in a state and has not complied with the law of that state prescribing conditions on which it may do so, but which goes into the state for the lawful purpose of

repossessing itself, by a permissible action in the courts, of specific personal property unlawfully taken out of its possession elsewhere and fraudulently carried into that state, is within the jurisdiction for all the purposes of that undertaking and is entitled to the equal protection of the laws so far as the suit is concerned.[8]

Footnotes

1 U.S.—Grosjean v. American Press Co., 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936); Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).
Ga.—Eckles v. Atlanta Technology Group, Inc., 267 Ga. 801, 485 S.E.2d 22 (1997).
Iowa—NextEra Energy Resources LLC v. Iowa Utilities Bd., 815 N.W.2d 30 (Iowa 2012).
Ky.—Elk Horn Coal Corp. v. Cheyenne Resources, Inc., 163 S.W.3d 408 (Ky. 2005).

2 U.S.—RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045 (9th Cir. 2002); Alexis, Inc. v. Pinellas County, Florida, 194 F. Supp. 2d 1336 (M.D. Fla. 2002); Muller Tours, Inc. v. Vanderhoef, 13 F. Supp. 2d 501 (S.D. N.Y. 1998); Grimm v. Borough of Norristown, 226 F. Supp. 2d 606 (E.D. Pa. 2002), order amended on other grounds, 2002 WL 737497 (E.D. Pa. 2002).
Cal.—Genesis Environmental Services v. San Joaquin Valley Unified Air Pollution Control Dist., 113 Cal. App. 4th 597, 6 Cal. Rptr. 3d 574 (5th Dist. 2003).
Ky.—Elk Horn Coal Corp. v. Cheyenne Resources, Inc., 163 S.W.3d 408 (Ky. 2005).

3 U.S.—Kentucky Finance Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544, 43 S. Ct. 636, 67 L. Ed. 1112 (1923).
Aliens as persons protected by equal protection guaranty, generally, see § 1262.

4 Wash.—Equitable Shipyards, Inc. v. State By and Through Dept. of Transp., 93 Wash. 2d 465, 611 P.2d 396 (1980).

5 U.S.—Wheeling Steel Corp. v. Glander, 337 U.S. 562, 69 S. Ct. 1291, 93 L. Ed. 1544, 55 Ohio L. Abs. 305 (1949).
Citizenship
When a corporation is not a citizen, it is not entitled to equal protection of law.
Del.—In re Saulsbury's Trust Estate, 43 Del. Ch. 400, 233 A.2d 739 (1967).

6 U.S.—Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77, 58 S. Ct. 436, 82 L. Ed. 673 (1938).
Alaska—Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975).

7 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945); Lincoln Nat. Life Ins. Co. v. Read, 325 U.S. 673, 65 S. Ct. 1220, 89 L. Ed. 1861 (1945).

8 U.S.—Kentucky Finance Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544, 43 S. Ct. 636, 67 L. Ed. 1112 (1923).

16B C.J.S. Constitutional Law § 1262

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1262. Persons protected—Aliens

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010, 3011, 3013 to 3015

Under the Equal Protection Clause, the federal government may treat aliens differently from citizens so long as the difference in treatment has a rational basis.

Under the Equal Protection Clause, the federal government may treat aliens differently from citizens so long as the difference in treatment has a rational basis.[1] Although aliens outside of the United States cannot complain of a lack of equal protection of the law,[2] those aliens residing or present within the United States must be afforded equal protection.[3] Indeed, aliens who are in the jurisdiction of the United States under any status, even as illegal entrants or under a legal fiction, are entitled to the protections of the Fourteenth Amendment.[4] However, equal protection of nonimmigrant aliens temporarily residing in the United States is removed where state action involves a decision connected with law enforcement functions.[5]

Lawfully admitted resident aliens are considered persons entitled to the equal protection of the laws as provided for by the Fourteenth Amendment,[6] and this protection extends to aliens who work for a living in the common occupations of the community.[7]

The appellate courts are divided on the appropriate level of review applicable to claims by nonimmigrant aliens, with some finding that a rational basis review is the appropriate standard for evaluating state law classifications affecting nonimmigrant aliens,[8] while others apply a strict scrutiny analysis.[9]

Even aliens whose presence in the United States is illegal, so long as they are within the territory of the United States and subject to its laws, are considered persons entitled to the equal protection of the laws as provided for by the Fourteenth Amendment.[10]

Under a rational-basis equal protection review, the federal classification among groups of aliens must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.[11]

It is not violative of the equal protection component of the Fifth Amendment to treat aliens differently from citizens with respect to the Fourth Amendment.[12]

Footnotes

1 U.S.—Soskin v. Reinertson, 353 F.3d 1242 (10th Cir. 2004).

2 U.S.—Cermeno-Cerna v. Farrell, 291 F. Supp. 521 (C.D. Cal. 1968) (overruled in part on other grounds by, Sam Andrews' Sons v. Mitchell, 457 F.2d 745 (9th Cir. 1972)).
Jurisdiction
The Fourteenth Amendment has no application to aliens not within the jurisdiction of United States.
U.S.—De Tenorio v. McGowan, 510 F.2d 92 (5th Cir. 1975).

3 U.S.—Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); Dandamudi v. Tisch, 686 F.3d 66 (2d Cir. 2012); An Na Peng v. Holder, 673 F.3d 1248 (9th Cir. 2012).
Ariz.—Kurti v. Maricopa County, 201 Ariz. 165, 33 P.3d 499, 113 A.L.R.5th 653 (Ct. App. Div. 1 2001).
Mass.—Doe v. Commissioner of Transitional Assistance, 437 Mass. 521, 773 N.E.2d 404 (2002).

4 U.S.—Sagana v. Tenorio, 384 F.3d 731 (9th Cir. 2004), as amended, (Oct. 18, 2004).

5 U.S.—Ben-Yakir v. Gaylinn Associates, Inc., 535 F. Supp. 543 (S.D. N.Y. 1982) (disapproved of on other grounds by, Bhandari v. First Nat. Bank of Commerce, 808 F.2d 1082, 22 Fed. R. Evid. Serv. 644 (5th Cir. 1987)).

6 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); Dandamudi v. Tisch, 686 F.3d 66 (2d Cir. 2012); Cervantes v. Guerra, 651 F.2d 974 (5th Cir. 1981).
Ariz.—Kurti v. Maricopa County, 201 Ariz. 165, 33 P.3d 499, 113 A.L.R.5th 653 (Ct. App. Div. 1 2001).
Mass.—Doe v. Commissioner of Transitional Assistance, 437 Mass. 521, 773 N.E.2d 404 (2002).

7 U.S.—Sugarman v. Dougall, 413 U.S. 634, 93 S. Ct. 2842, 37 L. Ed. 2d 853 (1973); Torao Takahashi v. Fish and Game Commission, 334 U.S. 410, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948).
Ariz.—Arizona State Liquor Bd. of Dept. of Liquor Licenses and Control v. Ali, 27 Ariz. App. 16, 550 P.2d 663 (Div. 2 1976).

8 U.S.—Van Staden v. St. Martin, 664 F.3d 56 (5th Cir. 2011); LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005); League of United Latin American Citizens v. Bredesen, 500 F.3d 523 (6th Cir. 2007).

9 U.S.—Dandamudi v. Tisch, 686 F.3d 66 (2d Cir. 2012); Adusumelli v. Steiner, 740 F. Supp. 2d 582 (S.D. N.Y. 2010), aff'd, 686 F.3d 66 (2d Cir. 2012).

10 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); U.S. v. Gomez, 797 F.2d 417 (7th Cir. 1986); Sagana v. Tenorio, 384 F.3d 731 (9th Cir. 2004), as amended, (Oct. 18, 2004).
Lawful reentry

Differential treatment of aliens under stop-time rule on suspensions of deportation, whereby aliens who left United States and lawfully reentered could restart continuous physical presence clock, but barring such relief upon administrative closure of immigration proceedings against alien, a native and citizen of Peru, who remained in the United States following her failure to appear at a deportation hearing, was rationally related to the government's legitimate purpose in combatting efforts by aliens to intentionally delay their immigration proceedings to enable them to apply for suspension of deportation, and thus, did not violate the Equal Protection Clause; by not appearing at the hearing and remaining in the United States, the alien was seeking to benefit from delays in her case to argue she satisfied the presence requirement, but, on the other hand, an alien who left the country and lawfully reentered caused no delay in her case.

U.S.—Arca-Pineda v. Attorney General of U.S., 527 F.3d 101 (3d Cir. 2008).

11 U.S.—Toro v. Secretary, U.S. Dept. of Homeland Sec., 707 F.3d 1224, 80 A.L.R. Fed. 2d 731 (11th Cir. 2013).

12 U.S.—U.S. v. Verdugo-Urquidez, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).

End of Document

16B C.J.S. Constitutional Law § 1263

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1263. State equal protection action

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3007, 3020 to 3027, 3033 to 3037, 3041, 3043, 4850, 4854, 4855, 4857

The Equal Protection Clause of the Fourteenth Amendment applies only to states or to those acting under color of state authority and to state action.

The Equal Protection Clause of the Fourteenth Amendment applies only to states or to those acting under state authority[1] so that without state action, there can be no equal protection violation.[2] The clause applies only to state action,[3] and this restriction is also applicable to an equal protection clause of a state constitution.[4]

The prohibition of the Fourteenth Amendment applies to, and may be violated by, state action of every kind, by a state actor,[5] or any agency or instrumentality,[6] including not only legislative[7] but also judicial[8] and executive or administrative[9] action, at least insofar as intentional and arbitrary discrimination is concerned.[10] The actions of representatives of the state in the management of a state university may be regarded as the action of the state in determining whether refusal to admit an African American to the school of law of the state university constitutes denial of equal protection of the laws.[11]

Every state official, of whatever rank, is bound by the Fourteenth Amendment.[12] The State cannot escape its obligations under the Equal Protection Clause by delegating some of its governmental functions to local units.[13]

Political subdivisions of the state must comply with the Equal Protection Clause of the Fourteenth Amendment,[14] as in the case of counties,[15] municipalities,[16] boroughs,[17] local school authorities,[18] school districts,[19] or public universities.[20] Moreover, a state university professor has also been found to be a state actor subject to the constraints of the Equal Protection Clause.[21] It has been stated, however, that federal funding does not make a public school a state actor, for purposes of equal protection analysis.[22] Local laws of a state's subdivisions,[23] such as a custom with the force of law in a political subdivision of a state,[24] or a local policy or practice,[25] may offend the Fourteenth Amendment even though it lacks statewide application. The electorate, when it assumes to exercise the lawmaking function by adopting law directly by popular vote, is as much a state agency as any of its elected officials and, if discrimination is accomplished, it is unlawful.[26]

A state actor may be charged with otherwise private discrimination in violation of the Equal Protection Clause by seeking to enforce it.[27]

Common law.

The Equal Protection Clause is applicable to state common law,[28] and state judicial action is not immunized from its operation simply because it is taken pursuant to the state's common-law policy.[29]

CUMULATIVE SUPPLEMENT

Cases:

Civil rights, such as are guaranteed by the United States Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by state authority in the shape of laws, customs, or judicial or executive proceedings, and the wrongful act of an individual, unsupported by any such authority, is simply a private wrong or a crime of the individual. Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966); Adams v. Howerton, 673 F.2d 1036 (9th Cir. 1982); D.W. by M.J. on Behalf of D.W. v. Poundstone, 165 F.R.D. 661 (M.D. Ala. 1996), aff'd, 113 F.3d 1214 (11th Cir. 1997); Caldwell v. KFC Corp., 958 F. Supp. 962 (D.N.J. 1997).
Ill.—In re Adoption of L.T.M., 214 Ill. 2d 60, 291 Ill. Dec. 645, 824 N.E.2d 221 (2005).
Indian in connection with tribe
Indian tribes are not constrained by provisions of the Fourteenth Amendment and, hence, due process and equal protection claims against a tribe cannot arise under the Constitution.
U.S.—National Farmers Union Ins. Companies v. Crow Tribe of Indians, 736 F.2d 1320, 18 Ed. Law Rep. 321 (9th Cir. 1984), judgment rev'd on other grounds, 471 U.S. 845, 105 S. Ct. 2447, 85 L. Ed. 2d 818, 25 Ed. Law Rep. 30 (1985).

2 U.S.—Torres-Morales v. U.S., 537 F. Supp. 2d 291 (D.P.R. 2007).
Mass.—Watson v. Baker, 444 Mass. 487, 829 N.E.2d 648 (2005).

3 U.S.—U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999); U.S. v. Avant, 907 F.2d 623 (6th Cir. 1990); Stevens v. Illinois Dept. of Transp., 210 F.3d 732 (7th Cir. 2000); Raper v. State of Iowa, 940 F. Supp. 1421 (S.D. Iowa 1996), judgment aff'd, 115 F.3d 623 (8th Cir. 1997); Local Unions 20 v. United Brotherhood of Carpenters and Joiners of America, 223 F. Supp. 2d 491, 48 U.C.C. Rep. Serv. 2d 519 (S.D. N.Y. 2002).
Ill.—People v. Lander, 215 Ill. 2d 577, 294 Ill. Dec. 646, 831 N.E.2d 596 (2005).
La.—Country Club of Louisiana Property Owners Ass'n, Inc. v. Dornier, 691 So. 2d 142 (La. Ct. App. 1st Cir. 1997).

4 U.S.—Caldwell v. KFC Corp., 958 F. Supp. 962 (D.N.J. 1997).
N.H.—Cambridge Mut. Fire Ins. Co. v. Crete, 150 N.H. 673, 846 A.2d 521 (2004).
Mich.—Scalise v. Boy Scouts of America, 265 Mich. App. 1, 692 N.W.2d 858, 195 Ed. Law Rep. 961 (2005).

5 U.S.—Bartley v. U.S. Dept. of Army, 221 F. Supp. 2d 934 (C.D. Ill. 2002).
Mass.—Watson v. Baker, 444 Mass. 487, 829 N.E.2d 648 (2005).

6 U.S.—Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979); Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974).

7 § 1267.

8 U.S.—Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948); Cichowski v. Sauk County, 409 F. Supp. 2d 1098 (W.D. Wis. 2006).

9 U.S.—Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Jackson v. Marine Exploration Co., Inc., 583 F.2d 1336 (5th Cir. 1978).
La.—Smith v. Department of Health & Human Resources, Southeast Louisiana State Hosp., 461 So. 2d 1243 (La. Ct. App. 1st Cir. 1984), writ denied, 464 So. 2d 316 (La. 1985).

10 U.S.—Sunday Lake Iron Co. v. Wakefield Tp., 247 U.S. 350, 38 S. Ct. 495, 62 L. Ed. 1154 (1918).
Cal.—United Ins. Co. of Chicago, Ill. v. Maloney, 127 Cal. App. 2d 155, 273 P.2d 579 (1st Dist. 1954).

11 U.S.—State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208 (1938).
Facilities of state university
State university which makes its facilities available to unaffiliated organizations is required under state and federal constitutions to administer its regulations in nondiscriminatory manner with equality for all.
N.Y.—Civil Service Emp. Ass'n v. State University of Stony Brook, 82 Misc. 2d 334, 368 N.Y.S.2d 927 (Sup 1974).

12 U.S.—U.S. v. Raines, 362 U.S. 17, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960).

13 U.S.—Gautreaux v. Chicago Housing Authority, 503 F.2d 930 (7th Cir. 1974), judgment aff'd, 425 U.S. 284, 96 S. Ct. 1538, 47 L. Ed. 2d 792 (1976).

14 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999).

15 N.M.—Pinnell v. Board of County Com'rs of Santa Fe County, 127 N.M. 452, 1999-NMCA-074, 982 P.2d 503 (Ct. App. 1999).

16 U.S.—Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969).
N.J.—Trombetta v. Mayor and Com'rs of City of Atlantic City, 181 N.J. Super. 203, 436 A.2d 1349 (Law Div. 1981), judgment aff'd, 187 N.J. Super. 351, 454 A.2d 900 (App. Div. 1982).

17 Alaska—Malabed v. North Slope Borough, 70 P.3d 416 (Alaska 2003).

18 U.S.—Haney v. County Bd. of Educ. of Sevier County, Ark., 410 F.2d 920 (8th Cir. 1969); National Ass'n for Advancement of Colored People v. Lansing Bd. of Ed., 429 F. Supp. 583 (W.D. Mich. 1976), judgment aff'd, 559 F.2d 1042 (6th Cir. 1977) and aff'd, 571 F.2d 582 (6th Cir. 1978).
Cal.—Crawford v. Board of Education, 17 Cal. 3d 280, 130 Cal. Rptr. 724, 551 P.2d 28 (1976).

19 Mich.—Scalise v. Boy Scouts of America, 265 Mich. App. 1, 692 N.W.2d 858, 195 Ed. Law Rep. 961 (2005).

20 U.S.—Hill v. Ross, 183 F.3d 586, 136 Ed. Law Rep. 754 (7th Cir. 1999).

21 U.S.—Hayut v. State University of New York, 352 F.3d 733, 183 Ed. Law Rep. 668, 197 A.L.R. Fed. 659 (2d Cir. 2003).

22 U.S.—Davis v. Monroe County Bd. of Educ., 120 F.3d 1390, 120 Ed. Law Rep. 390 (11th Cir. 1997), judgment rev'd on other grounds, 526 U.S. 629, 119 S. Ct. 1661, 143 L. Ed. 2d 839, 134 Ed. Law Rep. 477 (1999).

23 U.S.—Jones v. Evans, 932 F. Supp. 204 (N.D. Ohio 1996).

24 U.S.—Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); Stengel v. City of Columbus, Ohio, 737 F. Supp. 1457 (S.D. Ohio 1988).

25 U.S.—Furst v. New York City Transit Authority, 631 F. Supp. 1331 (E.D. N.Y. 1986).

26 Cal.—Mulkey v. Reitman, 64 Cal. 2d 529, 50 Cal. Rptr. 881, 413 P.2d 825 (1966), judgment aff'd, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).

27 U.S.—Diaz v. Silver, 978 F. Supp. 96 (E.D. N.Y. 1997), judgment aff'd, 522 U.S. 801, 118 S. Ct. 36, 139 L. Ed. 2d 5 (1997) and judgment aff'd, 522 U.S. 801, 118 S. Ct. 36, 139 L. Ed. 2d 5 (1997) and judgment aff'd, 522 U.S. 801, 118 S. Ct. 36, 139 L. Ed. 2d 5 (1997).

28 N.J.—Jersey Shore Medical Center-Fitkin Hospital v. Baum's Estate, 84 N.J. 137, 417 A.2d 1003, 11 A.L.R.4th 1147 (1980).

29 U.S.—Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948).

End of Document

16B C.J.S. Constitutional Law § 1264

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1264. Federal equal protection action

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3007, 3020, 3024, 3025, 3033, 3034, 3035, 3036, 3037, 3041, 3043, 3861, 4850, 4854, 4855, 4857

Although the Equal Protection Clause of the Fourteenth Amendment is not applicable to the federal government, the concepts of equal protection implicit in the due process guaranty of the Fifth Amendment are applicable to actions of the federal government.

The Equal Protection Clause of the Fourteenth Amendment does not apply to actions taken by the federal government,[1] federal officials,[2] the District of Columbia,[3] or by a territory of the United States.[4] Moreover, the Fourteenth Amendment's equal protection guarantee does not apply to federal legislation.[5] However, the concepts of equal protection are implicit in the due process guaranty of the Fifth Amendment, which is binding on the federal government,[6] and are thereby made applicable to actions of the federal government[7] as well as the District of Columbia.[8] A federal statute may thus be challenged under the equal protection component of the Due Process Clause of the Fifth Amendment.[9] In any event, Congress may not authorize the states to violate the Equal Protection Clause.[10] Moreover, Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the states to violate the Equal Protection Clause.[11] However, it has also been held that the federal government can, by virtue of the enforcement clause of the Fourteenth Amendment, engage in affirmative action

with a freer hand than states and municipalities can do, and one way it can do that is by authorizing the states to do things that they could not do without federal authorization.[12]

Either the equal protection component of the Fifth Amendment or the Equal Protection Clause of the Fourteenth Amendment applies to the residents of Puerto Rico,[13] and since Filipinos are by statute nationals of the United States, they are entitled to equal protection under the Fifth Amendment.[14]

Relation of equal protection to concept of due process.

While the concepts of equal protection and due process are not mutually exclusive since they both stem from a basic concept of fairness,[15] they are not interchangeable.[16] The Due Process Clause of the Fifth Amendment, however, has been understood to incorporate the equal protection principles of the Fourteenth Amendment.[17] The Equal Protection Clause of the Fourteenth Amendment provides a more explicit safeguard of prohibited unfairness than the Due Process Clause of the Fifth Amendment,[18] and what is permissible state action under the Fourteenth Amendment would be a fortiori permissible under the less explicit guaranties of the Fifth Amendment.[19]

Treatment and analysis of claims.

The treatment of Fifth Amendment equal protection claims is the same as,[20] or largely similar to,[21] that given to Fourteenth Amendment equal protection claims. The analysis of equal protection issues and claims arising under the Fifth Amendment is the same as that under the Equal Protection Clause of the Fourteenth Amendment.[22]

CUMULATIVE SUPPLEMENT

Cases:

Equality guarantee, applicable to challenge to gender-based differential created by statutes governing acquisition of United States citizenship by child born abroad to one parent who was United States citizen and another parent who was citizen of another nation, was not Fourteenth Amendment's explicit Equal Protection Clause, but was instead guarantee implicit in Fifth Amendment's Due Process Clause, since case involved federal, not state, legislation. U.S.C.A. Const.Amends. 5, 14; Immigration and Nationality Act, § 301(a)(7), 8 U.S.C.A. § 1401(a)(7) (1958 ed.); Immigration and Nationality Act, § 309(a, c), 8 U.S.C.A. § 1409(a, c). Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921); Hebshi v. U.S., 12 F. Supp. 3d 1036 (E.D. Mich. 2014).
Cal.—Harding v. Harding, 99 Cal. App. 4th 626, 121 Cal. Rptr. 2d 450, 18 A.L.R.6th 827 (2d Dist. 2002).

2 U.S.—Akbari v. Godshall, 524 F. Supp. 635 (D. Colo. 1981).

3 U.S.—Hedgepeth v. Washington Metropolitan Area Transit, 284 F. Supp. 2d 145 (D.D.C. 2003), order aff'd, 386 F.3d 1148 (D.C. Cir. 2004).
D.C.—Armfield v. U.S., 811 A.2d 792 (D.C. 2002).

4 U.S.—South Porto Rico Sugar Co. v. Buscaglia, 154 F.2d 96 (C.C.A. 1st Cir. 1946); Downie v. Powers, 193 F.2d 760 (10th Cir. 1951); Alaska S S Co v. Mullaney, 12 Alaska 433, 84 F. Supp. 561 (Terr. Alaska 1949), judgment aff'd, 12 Alaska 594, 180 F.2d 805 (9th Cir. 1950).

5 U.S.—U.S. v. Williams, 774 F. Supp. 594 (D. Colo. 1991); In re Adams, 214 B.R. 212 (B.A.P. 9th Cir. 1997).

6 U.S.—Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), opinion supplemented, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955); Crawford v. Cushman, 531 F.2d 1114 (2d Cir. 1976); N.L.R.B. v. Sumter Plywood Corp., 535 F.2d 917 (5th Cir. 1976); Consortium of Community Based Organizations v. Donovan, 530 F. Supp. 520 (E.D. Cal. 1982); Akbari v. Godshall, 524 F. Supp. 635 (D. Colo. 1981).

Effect

The equal protection obligation imposed on the federal government by Due Process Clause of the Fifth Amendment is not an obligation to provide the best governance possible.

U.S.—Schweiker v. Wilson, 450 U.S. 221, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981).

7 U.S.—Skelly v. I.N.S., 168 F.3d 88 (2d Cir. 1999); Lee v. City of Los Angeles, 250 F.3d 668, 56 Fed. R. Evid. Serv. 698 (9th Cir. 2001); United Seniors Ass'n, Inc. v. Shalala, 2 F. Supp. 2d 39 (D.D.C. 1998), aff'd, 182 F.3d 965 (D.C. Cir. 1999); U.S. v. Collins, 603 F. Supp. 301 (S.D. Fla. 1985); In re Day, 213 B.R. 145 (C.D. Ill. 1997); Cotter v. City of Boston, 193 F. Supp. 2d 323 (D. Mass. 2002), aff'd in part, rev'd in part on other grounds, 323 F.3d 160 (1st Cir. 2003); Panas v. Reno, 114 F. Supp. 2d 283 (S.D. N.Y. 2000).

8 U.S.—Hedgepeth v. Washington Metropolitan Area Transit, 284 F. Supp. 2d 145 (D.D.C. 2003), order aff'd, 386 F.3d 1148 (D.C. Cir. 2004).

9 U.S.—In re McClain, 264 B.R. 230, 2001 BNH 30 (Bankr. D. N.H. 2001).

10 U.S.—Westenfelder v. Ferguson, 998 F. Supp. 146 (D.R.I. 1998).

11 U.S.—Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).

12 U.S.—Milwaukee County Pavers Ass'n v. Fiedler, 922 F.2d 419 (7th Cir. 1991).

13 U.S.—DiMarco-Zappa v. Cabanillas, 238 F.3d 25 (1st Cir. 2001).

14 U.S.—Petition of Nisperos, 471 F. Supp. 296 (C.D. Cal. 1979).

15 U.S.—Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), opinion supplemented on other grounds, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955); Collins v. Finch, 311 F. Supp. 301 (W.D. Pa. 1970).

16 U.S.—Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921); Collins v. Finch, 311 F. Supp. 301 (W.D. Pa. 1970).

17 U.S.—Markham v. White, 172 F.3d 486 (7th Cir. 1999).

18 U.S.—U. S. v. Baker, 262 F. Supp. 657 (D. D.C. 1966); Collins v. Finch, 311 F. Supp. 301 (W.D. Pa. 1970).

19 U.S.—Carroll v. Finch, 326 F. Supp. 891 (D. Alaska 1971).

20 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013); Azam v. District of Columbia Taxicab Commission, 46 F. Supp. 3d 38 (D.D.C. 2014); Harris v. Department of Homeland Sec., 18 F. Supp. 3d 1349 (S.D. Fla. 2014), as amended, (May 8, 2014).

21 U.S.—Rodriguez-Silva v. I.N.S., 242 F.3d 243 (5th Cir. 2001).

22 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); Weinberger v. Wiesenfeld, 420 U.S. 636, 95 S. Ct. 1225, 43 L. Ed. 2d 514 (1975); Matter of Roberts, 682 F.2d 105, 34 Fed. R. Serv. 2d 576 (3d Cir. 1982).

End of Document

16B C.J.S. Constitutional Law § 1265

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1265. Private persons, corporations, or associations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3027

Private conduct abridging individual rights does not violate the Equal Protection Clause unless to some significant extent a state has been found to have become involved in it.

The Equal Protection Clause of the Fourteenth Amendment relates to state action[1] and does not offer protection against private conduct,[2] whether that of an individual,[3] a corporation,[4] or an association or organization.[5] Private conduct abridging individual rights is not within the scope of the Equal Protection Clause unless to some significant extent the state in any of its manifestations has been found to have become involved in it,[6] and state action may not be found where government involvement is insignificant.[7] Moreover, an ostensibly private organization or individual's action may be treated as the government's action if, though only if, there is such a close nexus between the state and the challenged action that seemingly private behavior may be fairly treated as that of the state itself.[8]

No precise formula has been formulated for determining whether a state has become significantly involved in private discrimination,[9] and the issue must be determined by sifting the facts on a case-by-case basis.[10] However, state action exists when the State has so far insinuated itself into a position of interdependence with a private entity that it must be recognized as a joint participant in the challenged activity.[11] It has alternatively been stated that the required nexus for treating private

conduct as state action under the Fourteenth Amendment may be satisfied in two situations: (1) where the State effectively directs, controls, or encourages the actions of a private party; and (2) where a private party is performing functions that are traditionally the exclusive prerogative of the State.[12] Under the "symbiosis analysis" to determine whether conduct by a private party constitutes state action within the meaning of the Fourteenth Amendment, conduct is considered state action if the State has so far insinuated itself into a position of interdependence with the acting party that it must be recognized as a joint participant in the challenged activity.[13] Assuming the symbiotic relationship test is fully intact, a true symbiosis subjecting a private entity to the Fourteenth Amendment is predicated on interdependence and joint participation and thus ousts the challenged conduct from center stage and concentrates instead on the nature of the overall relationship between the State and the private entity.[14] A state or city's acquiescence, approval, or indirect involvement in private conduct is not enough to show the required state action for purposes of a claim of constitutional violation.[15] Rather, the plaintiff must show that the State has exercised coercive power or has provided such significant encouragement, either overt or covert, that the challenged conduct fairly can be attributed to the State.[16]

Private groups or individuals which are endowed by the State with powers and functions governmental in nature become, in effect, agencies or instrumentalities of the State and subject to its constitutional limitations.[17] Moreover, entwinement with government will support the conclusion that an ostensibly private organization ought to be charged with a public character and judged by constitutional standards.[18] Thus, conduct that is formally private may become so entwined with governmental policies or so impregnated with governmental character as to become subject to constitutional limitations placed upon state action,[19] particularly where an association performs a function which it is the duty of the State to perform.[20] Thus, a person or entity given the authority by state law to make the sole nominations for a state agency is, at least in the selecting process, performing a state function.[21]

There are two exceptions to the rule that only state actors are subject to liability for Fourteenth Amendment violations: when the defendant is vested with a public function or when the government is sufficiently involved with the acts of the private actor.[22] The public function test for determining whether a private entity is a state actor, capable of committing equal protection violations, requires the consideration of whether the entity exercises powers which are traditionally exclusively reserved to the state, such as holding elections, or eminent domain.[23] The doctrine of public function applies only to those services which are so clearly governmental in nature that the State cannot be permitted to escape responsibility by allowing them to be managed by a supposedly private agency.[24] The service involved must not only be one which is traditionally the prerogative of the State but also must be one which the State itself is under an affirmative duty to provide.[25] The public function analysis for determining whether a private entity is subject to the Fourteenth Amendment is designed to flush out a state's attempt to evade its responsibilities by delegating them to private entities.[26]

Action by a private party does not become state action merely because of the receipt of some benefit or service from the state or subjection to state regulation.[27] Generally, the mere receipt of public funds does not convert the activities of a private organization into state activities.[28]

Possession of license.

The fact that a person who commits an act of discrimination has his or her conduct and license regulated by the State is insufficient to constitute state action for purposes of the Fourteenth Amendment.[29] Thus, the fact that the activities of real estate brokers, banks, savings and loan institutions, insurance companies, and other private entities are either licensed by or subject to regulation of a state agency does not convert a private action by these entities that is allegedly racially discriminatory into a state action for which the State would be liable.[30] Moreover, the fact that a private hospital receives substantial revenues through Medicare and other government-sponsored health care programs and was licensed, regulated, and inspected by government

departments does not mean that the hospital is acting "under the color of state law" so as to render its billing practices subject to the equal protection clause of the federal and state constitutions.[31] However, possession of a license may be considered in conjunction with other indications of state participation to determine whether there is significant state involvement in invidious discrimination.[32]

Trust.

The Equal Protection Clause of the Fourteenth Amendment does not apply to purely private trusts.[33] The question of whether state action is involved in the administration of a discriminatory trust cannot be measured entirely by the governing instrument, and actual state participation is the test of constitutionality.[34] When a court applies trust law that neither encourages, nor affirmatively promotes, nor compels private discrimination but allows the parties to engage in private selection in the devise or bequest of their property, that choice will not be attributable to the state and subjected to the Fourteenth Amendment's strictures.[35] Moreover, equal protection concerns are not implicated by the interpretation of irrevocable trusts to exclude adopted children and their issue from the terms of a trust, since only government actions are limited by the Equal Protection Clause, and it is the settlor's action that discriminates against adopted individuals.[36]

CUMULATIVE SUPPLEMENT

Cases:

The provisions of the Fourteenth Amendment prohibiting state laws abridging the privileges of the citizen, or depriving any person of life, liberty, or property without due process of law, or denying any person equal protection of the law, apply exclusively to state legislation, and have no reference to illegal acts of individuals. The power granted Congress to enforce it, with appropriate legislation, applies to corrective legislation only, such as may be necessary to counteract and redress the effect of such forbidden state laws, and will not authorize direct legislation, such as Act Cong. March 1, 1875, 18 Stat. 335, known as the Civil Rights Act. Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

Snowboard ban at a privately owned ski resort located largely on United States Forest Service (USFS) land was not state action under symbiotic-relationship test, and, thus, ban was not subject to scrutiny under Fourteenth Amendment's Equal Protection Clause, where resort was not indispensable to USFS's purpose, fees received by USFS from resort's special use permit amounted to only 0.1% of its annual budget, and USFS did not participate in funding, creation, or financial structure of resort. U.S.C.A. Const.Amend. 14. Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 § 1263.

2 U.S.—U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000); Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999); Black v. Barberton Citizens Hosp., 134 F.3d 1265, 1998 FED App. 0030P (6th Cir. 1998); Stevens v. Illinois Dept. of Transp., 210 F.3d 732 (7th Cir. 2000).
S.C.—In re Estate of Boynton, 355 S.C. 299, 584 S.E.2d 154 (Ct. App. 2003).

3 U.S.—Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Falzarano v. U.S., 607 F.2d 506 (1st Cir. 1979).

N.J.—Radiological Soc. of New Jersey v. Sheeran, 175 N.J. Super. 367, 418 A.2d 1300 (App. Div. 1980).

Attorney

A civil rights plaintiff, claiming that the alleged malpractice of his attorney in his age discrimination case against the state violated his due process rights and equal protection rights, failed to show that his attorney was a state actor where the attorney was not acting on behalf of the state when he was representing plaintiff; thus, the plaintiff could not succeed on his civil rights claim against his attorney.

U.S.—Wasko v. Silverberg, 103 Fed. Appx. 332 (10th Cir. 2004).

4 Pa.—National Ass'n for Advancement of Colored People, Inc. v. Pennsylvania Public Utility Commission, 5 Pa. Commw. 312, 290 A.2d 704 (1972).

5 U.S.—Sammons v. National Com'n on Certification of Physician Assistants, Inc., 104 F. Supp. 2d 1379 (N.D. Ga. 2000).

Labor union not subject to equal protection constraints

U.S.—Local Unions 20 v. United Brotherhood of Carpenters and Joiners of America, 223 F. Supp. 2d 491, 48 U.C.C. Rep. Serv. 2d 519 (S.D. N.Y. 2002).

Law firm

Complaint against law firm alleging that their representation of clients deprived plaintiff of equal protection failed to state claim for relief as no state action was involved.

N.Y.—Phillips v. Cahill Gordon & Reindel, 109 Misc. 2d 656, 440 N.Y.S.2d 809 (Sup 1981).

6 U.S.—Peterson v. City of Greenville, S. C., 373 U.S. 244, 83 S. Ct. 1119, 10 L. Ed. 2d 323 (1963); Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961); Ginn v. Mathews, 533 F.2d 477 (9th Cir. 1976).

Mont.—Matter of Cram's Will, 186 Mont. 37, 606 P.2d 145 (1980).

7 U.S.—New York City Jaycees, Inc. v. United States Jaycees, Inc., 512 F.2d 856 (2d Cir. 1975); Stearns v. Veterans of Foreign Wars, 394 F. Supp. 138 (D.D.C. 1975), aff'd, 527 F.2d 1387 (D.C. Cir. 1976).

8 U.S.—Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807, 151 Ed. Law Rep. 18 (2001); Single Moms, Inc. v. Montana Power Co., 331 F.3d 743 (9th Cir. 2003); Malesevic v. Tecom Fleet Services, Inc., 72 F. Supp. 2d 932 (N.D. Ind. 1998).

9 U.S.—Reitman v. Mulkey, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).

10 U.S.—Reitman v. Mulkey, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967); Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961); Nodleman v. Aero Mexico, 528 F. Supp. 475 (C.D. Cal. 1981); Sternberg v. U.S.A. Nat. Karate-Do Federation, 123 F. Supp. 2d 659 (E.D. N.Y. 2000).

N.H.—In re Certain Scholarship Funds, 133 N.H. 227, 575 A.2d 1325, 61 Ed. Law Rep. 149, 90 A.L.R.4th 811 (1990).

11 U.S.—Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999); Nodleman v. Aero Mexico, 528 F. Supp. 475 (C.D. Cal. 1981); Long v. National Football League, 870 F. Supp. 101 (W.D. Pa. 1994), judgment aff'd, 66 F.3d 311 (3d Cir. 1995).

12 U.S.—Malesevic v. Tecom Fleet Services, Inc., 72 F. Supp. 2d 932 (N.D. Ind. 1998).

13 U.S.—Long v. National Football League, 870 F. Supp. 101 (W.D. Pa. 1994), judgment aff'd, 66 F.3d 311 (3d Cir. 1995).

14 U.S.—Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999).

15 U.S.—Barnes v. Lehman, 861 F.2d 1383 (5th Cir. 1988); Long v. National Football League, 870 F. Supp. 101 (W.D. Pa. 1994), judgment aff'd, 66 F.3d 311 (3d Cir. 1995).

16 U.S.—Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999); Jenkins v. State of Mo., 593 F. Supp. 1485, 20 Ed. Law Rep. 852 (W.D. Mo. 1984); Long v. National Football League, 870 F. Supp. 101 (W.D. Pa. 1994), judgment aff'd, 66 F.3d 311 (3d Cir. 1995).

17 U.S.—Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966).

D.C.—Drew v. U. S., 292 A.2d 164 (D.C. 1972).

18 U.S.—Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807, 151 Ed. Law Rep. 18 (2001).

19 U.S.—Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966); Holodnak v. Avco Corp., Avco-Lycoming Div., Stratford, Connecticut, 514 F.2d 285 (2d Cir. 1975).
Mont.—Matter of Cram's Will, 186 Mont. 37, 606 P.2d 145 (1980).

20 **Control of electoral process**
Once it is shown that a private organization is, in effect, controlling a part of the electoral process, organization becomes subject to same constitutional restrictions which apply to state.
U.S.—Korzenik v. Marrow, 401 F. Supp. 77 (S.D. N.Y. 1975).

21 U.S.—Finch v. Mississippi State Medical Ass'n, Inc., 585 F.2d 765 (5th Cir. 1978), opinion modified on other grounds, 594 F.2d 163 (5th Cir. 1979).

22 U.S.—Boateng v. Inter American University, 190 F.R.D. 29 (D.P.R. 1999).

23 U.S.—Communities for Equity v. Michigan High School Athletic Ass'n, 80 F. Supp. 2d 729, 141 Ed. Law Rep. 646 (W.D. Mich. 2000).

24 U.S.—New York City Jaycees, Inc. v. United States Jaycees, Inc., 512 F.2d 856 (2d Cir. 1975).

25 U.S.—New York City Jaycees, Inc. v. United States Jaycees, Inc., 512 F.2d 856 (2d Cir. 1975).

26 U.S.—Perkins v. Londonderry Basketball Club, 196 F.3d 13 (1st Cir. 1999).

27 Mich.—Penny v. Kalamazoo Christian High School Ass'n, 48 Mich. App. 614, 210 N.W.2d 893 (1973).

28 U.S.—New York City Jaycees, Inc. v. United States Jaycees, Inc., 512 F.2d 856 (2d Cir. 1975); Wheat v. Mass, 994 F.2d 273 (5th Cir. 1993); Corrente v. St. Joseph's Hosp. and Health Center, 730 F. Supp. 493 (N.D. N.Y. 1990); White v. Moses Taylor Hosp., 763 F. Supp. 776 (M.D. Pa. 1991).
Mont.—Ham v. Holy Rosary Hospital, 165 Mont. 369, 529 P.2d 361 (1974).

29 U.S.—People v. Gary M., 138 Misc. 2d 1081, 526 N.Y.S.2d 986 (Sup 1988).

30 U.S.—Jenkins v. State of Mo., 593 F. Supp. 1485, 20 Ed. Law Rep. 852 (W.D. Mo. 1984).

31 Ill.—Methodist Medical Center of Illinois v. Taylor, 140 Ill. App. 3d 713, 95 Ill. Dec. 130, 489 N.E.2d 351 (3d Dist. 1986).

32 U.S.—Citizens Council on Human Relations v. Buffalo Yacht Club, 438 F. Supp. 316 (W.D. N.Y. 1977).

33 Del.—In re Potter's Will, 275 A.2d 574 (Del. Ch. 1970).

34 Del.—Milford Trust Co. v. Stabler, 301 A.2d 534 (Del. Ch. 1973).

35 N.Y.—Matter of Estate of Wilson, 59 N.Y.2d 461, 465 N.Y.S.2d 900, 452 N.E.2d 1228, 13 Ed. Law Rep. 110 (1983).

36 Mass.—Schroeder v. Danielson, 37 Mass. App. Ct. 450, 640 N.E.2d 495 (1994).

End of Document

16B C.J.S. Constitutional Law § 1266

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

A. General Considerations

§ 1266. Private persons, corporations, or associations —State participation in private discrimination

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3027

Government entities cannot, consistent with equal protection, enforce or support the practice of private invidious discrimination.

The Fourteenth Amendment does not require the State to assume other than a neutral position with respect to a private discrimination,[1] and government entities cannot, consistent with equal protection, enforce or support the practice of private invidious discrimination.[2] Neither general government involvement nor detailed regulation is sufficient to find state action.[3] The Fourteenth Amendment proscribes significant state involvement in, and encouragement or authorization of, private discrimination.[4] Hence, a state is responsible for a discriminatory act of a private party when the State, by its law, has compelled the act.[5] Moreover, when a state regulates private dealings, it may be responsible for private discrimination occurring in the regulated field only when enforcement of its regulation has the effect of compelling the private discrimination.[6]

The impetus for the discrimination need not originate with the state if it is state action that enforces the privately originated discrimination.[7] However, where the impetus for the discrimination is private, the State must have significantly involved itself with the discrimination in order for the discriminatory action to fall within the ambit of the constitutional prohibition.[8]

The operation of a private academic institution, even when it receives public grants, does not perform a public function.[9] Moreover, activities that the federal government could not constitutionally participate in directly cannot be supported indirectly through the provision of support for other persons engaged in such activities.[10] In determining whether the government is supporting unconstitutional discrimination the proper inquiry is whether the relationship between the government and the activity in question is of such a nature that the activity will be treated as an action of the government; if so, the issue is whether the government could directly engage in the activity consistent with the constitution, and if not, government involvement is unconstitutional, regardless of its purpose.[11]

CUMULATIVE SUPPLEMENT

Cases:

The legislation which Congress is authorized to adopt under the Fourteenth Amendment, U.S.C.A., is not general legislation upon the rights of the citizen, but corrective legislation such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the states may commit or take, and which, by the amendment, they are prohibited from committing or taking. Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Bright v. Isenbarger, 314 F. Supp. 1382 (N.D. Ind. 1970), judgment aff'd, 445 F.2d 412 (7th Cir. 1971).

2 U.S.—Hennessey v. National Collegiate Athletic Ass'n, 564 F.2d 1136 (5th Cir. 1977).
N.Y.—Matter of Estate of Wilson, 59 N.Y.2d 461, 465 N.Y.S.2d 900, 452 N.E.2d 1228, 13 Ed. Law Rep. 110 (1983).

3 U.S.—Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

4 Fla.—Moles v. White, 336 So. 2d 427 (Fla. 2d DCA 1976).

5 U.S.—Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

6 N.Y.—Matter of Estate of Wilson, 59 N.Y.2d 461, 465 N.Y.S.2d 900, 452 N.E.2d 1228, 13 Ed. Law Rep. 110 (1983).

7 U.S.—Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972).
Statute's role in determining intent of deceased under will as state action
Ga.—Nunnally v. Trust Co. Bank, 244 Ga. 697, 261 S.E.2d 621 (1979).

8 U.S.—Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993); McPartland v. American Broadcasting Companies, Inc., 623 F. Supp. 1334 (S.D. N.Y. 1985).

9 U.S.—Boateng v. Inter American University, 190 F.R.D. 29 (D.P.R. 1999).

10 U.S.—National Black Police Ass'n, Inc. v. Velde, 712 F.2d 569 (D.C. Cir. 1983).

11 U.S.—National Black Police Ass'n, Inc. v. Velde, 712 F.2d 569 (D.C. Cir. 1983).

16B C.J.S. Constitutional Law VI XVI B Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
West's A.L.R. Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991, 3000, 3034, 3035, 3037, 3039 to 3043, 3047, 3085, 3140, 3210

End of Document

16B C.J.S. Constitutional Law § 1267

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1267. General scope of prohibitions based on equal protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3007, 3033 to 3037, 3039 to 3043, 3047, 3057, 3065, 3085, 3140, 3210, 4850, 4854, 4855, 4857

State and municipal legislation is subject to the Equal Protection Clause of the Fourteenth Amendment.

State and municipal legislation is subject to the equal protection guaranty of the Fourteenth Amendment which requires that no state shall deny the equal protection of the laws to any person within its jurisdiction,[1] and the State cannot evade the constitutional requirement by its constitution or legislation.[2] Statutes can be considered state action, even where they codify common law, when, as a consequence of their enactment, private citizens are enabled to act in derogation of the Constitution.[3] Such legislation is valid as complying with, or invalid as violating, this requirement accordingly as it does or does not, affect and treat alike, with equality and uniformity, and without arbitrary or unreasonable distinction or discrimination, all persons similarly situated.[4] Hence, the Equal Protection Clause requires that a state and its subdivisions apply its legislation alike or evenhandedly to all persons similarly situated in a designated class.[5] The guarantee of equal protection does not deny the state the power to draw lines which result in different treatment for different classes of individuals;[6] however, it does prohibit the state from according unequal treatment to persons placed by a statute into classes for reasons wholly unrelated to the purpose of the legislation or a legitimate state purpose.[7] The Equal Protection Clause does not require absolute equality or precisely equal advantages; rather, a state may make classifications when enacting or carrying out legislation, but in order to satisfy the Equal Protection Clause, the

classifications made must be based on some reasonable ground.[8] In determining whether legislation is valid that has a special impact on less than all persons subject to the state's jurisdiction, the general rule is that the legislation or action is presumed valid and will be sustained if the classification is rationally related to a legitimate state interest.[9]

The equal protection guaranty does not require that a state choose between attacking every aspect of a problem or not attacking the problem at all[10] but rather permits the State to deal with particular parties and issues in different ways in different jurisdictions.[11] The legislature is thus free to approach the problem piecemeal and to learn from experience.[12] In other words, the State may act incrementally,[13] taking one step at a time, addressing itself to that phase of a problem which seems most acute to the legislative mind[14] even if to do so means that other phases of the problem are neglected.[15]

The demands of equal protection do not require that the entire field of governmental action be covered by one legislative enactment.[16] An entire remedial scheme will not be invalidated on equal protection grounds simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked.[17] Indeed, for purposes of an equal protection challenge, it is not relevant that legislation leaves unregulated other conduct that seems equally undesirable.[18] Hence, legislation which satisfies the equal protection guaranty is not invalid because it is not all-embracing but instead is limited,[19] as to territory,[20] or as to persons,[21] subjects,[22] objects to which the legislation is to be applied,[23] or evils or abuses to be remedied or corrected.[24]

When conducting equal protection analysis, the nature of the rights affected by the classification dictates the level of scrutiny to be applied.[25]

CUMULATIVE SUPPLEMENT

Cases:

Laws narrow in scope, including "class of one" legislation, may violate the Equal Protection Clause if arbitrary or inadequately justified. U.S.C.A. Const.Amend. 14. Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948).
N.H.—Opinion of the Justices, 117 N.H. 749, 379 A.2d 782 (1977).

2 Iowa—Redmond v. Carter, 247 N.W.2d 268 (Iowa 1976).

3 U.S.—Cockerel v. Caldwell, 378 F. Supp. 491 (W.D. Ky. 1974).

4 U.S.—Goesaert v. Cleary, 335 U.S. 464, 69 S. Ct. 198, 93 L. Ed. 163 (1948) (disapproved of on other grounds by, Craig v. Boren, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976)).
La.—McNeely v. Department of Health and Human Resources, 413 So. 2d 594 (La. Ct. App. 1st Cir. 1982), writ denied, 415 So. 2d 949 (La. 1982).

5 U.S.—McGuire v. City of Moraine, Ohio, 178 F. Supp. 2d 882 (S.D. Ohio 2001).
Ariz.—State v. Navarro, 201 Ariz. 292, 34 P.3d 971 (Ct. App. Div. 2 2001).

6 Ga.—Board of Regents, University System of Georgia v. Rux, 260 Ga. App. 760, 580 S.E.2d 559, 177 Ed. Law Rep. 603 (2003).

Minn.—Beaulieu v. Mack, 788 N.W.2d 892 (Minn. 2010).

7 Ga.—Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 255 Ga. App. 764, 566 S.E.2d 470 (2002).

Ill.—Wauconda Fire Protection Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 293 Ill. Dec. 246, 828 N.E.2d 216 (2005).

Mont.—McDermott v. Montana Dept. of Corrections, 2001 MT 134, 305 Mont. 462, 29 P.3d 992 (2001).

8 Conn.—State v. Long, 268 Conn. 508, 847 A.2d 862 (2004).

Ohio—Discount Cellular, Inc. v. Pub. Util. Comm., 112 Ohio St. 3d 360, 2007-Ohio-53, 859 N.E.2d 957 (2007).

9 U.S.—Johnson v. Paparozzi, 219 F. Supp. 2d 635 (D.N.J. 2002).

10 U.S.—Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970); Great American Houseboat Co. v. U.S., 780 F.2d 741 (9th Cir. 1986); DLS, Inc. v. City of Chattanooga, 894 F. Supp. 1140 (E.D. Tenn. 1995), judgment aff'd, 107 F.3d 403, 1997 FED App. 0066P (6th Cir. 1997); Port v. Heard, 594 F. Supp. 1212 (S.D. Tex. 1984), order aff'd, 764 F.2d 423 (5th Cir. 1985).

Cal.—People v. Jennings, 81 Cal. App. 4th 1301, 97 Cal. Rptr. 2d 727 (1st Dist. 2000).

Conn.—City Recycling, Inc. v. State, 257 Conn. 429, 778 A.2d 77 (2001).

11 U.S.—U.S. v. Pollard, 45 V.I. 672, 326 F.3d 397 (3d Cir. 2003).

12 Wash.—Davis v. State Through Dept. of Licensing, 90 Wash. App. 370, 952 P.2d 197 (Div. 3 1998), aff'd, 137 Wash. 2d 957, 977 P.2d 554 (1999).

13 U.S.—Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d 800 (W.D. Wis. 2004).

14 N.J.—McCann v. Clerk of City of Jersey City, 167 N.J. 311, 771 A.2d 1123 (2001).

Public safety

Legislatures are free to attack problems of public safety one step at a time and in such order as they deem appropriate.

U.S.—Richmond Boro Gun Club, Inc. v. City of New York, 896 F. Supp. 276 (E.D. N.Y. 1995), judgment aff'd, 97 F.3d 681 (2d Cir. 1996).

15 U.S.—Friedman v. Rogers, 440 U.S. 1, 99 S. Ct. 887, 59 L. Ed. 2d 100 (1979); Cleland v. National College of Business, 435 U.S. 213, 98 S. Ct. 1024, 55 L. Ed. 2d 225 (1978).

Ala.—Tyson v. Johns-Manville Sales Corp., 399 So. 2d 263 (Ala. 1981).

No settled formula

Wide leeway allowed states by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently admits of no settled formula.

U.S.—McDonald v. Board of Election Com'rs of Chicago, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969).

16 U.S.—Middleton v. Texas Power & Light Co., 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919); Royal Mineral Ass'n v. Lord, 13 F.2d 227 (D. Minn. 1926), aff'd, 271 U.S. 577, 46 S. Ct. 627, 70 L. Ed. 1093 (1926).

Conn.—Eielson v. Parker, 179 Conn. 552, 427 A.2d 814 (1980).

17 U.S.—Jankowski-Burczyk v. I.N.S., 291 F.3d 172 (2d Cir. 2002); Lukowski v. I.N.S., 279 F.3d 644 (8th Cir. 2002).

Ill.—Serpico v. Village of Elmwood Park, 344 Ill. App. 3d 203, 279 Ill. Dec. 158, 799 N.E.2d 961 (1st Dist. 2003).

18 U.S.—Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d 800 (W.D. Wis. 2004).

19 U.S.—Hughes v. Superior Court of Cal. in and for Contra Costa County, 339 U.S. 460, 70 S. Ct. 718, 94 L. Ed. 985, 57 Ohio L. Abs. 298 (1950).

Ariz.—City of Tucson v. Grezaffi, 200 Ariz. 130, 23 P.3d 675, 105 A.L.R.5th 711 (Ct. App. Div. 2 2001).

N.J.—Board of Ed. of Piscataway Tp. v. Caffiero, 86 N.J. 308, 431 A.2d 799 (1981).

20 § 1245.

21 U.S.—Harbold v. Richardson, 464 F.2d 1063 (3d Cir. 1972); Faulkner v. Jones, 10 F.3d 226, 87 Ed. Law Rep. 394 (4th Cir. 1993).

Cal.—People v. Applin, 40 Cal. App. 4th 404, 46 Cal. Rptr. 2d 862 (5th Dist. 1995).

22 U.S.—Bachtel v. Wilson, 204 U.S. 36, 27 S. Ct. 243, 51 L. Ed. 357 (1907); Independent Service Corp. v. Tousant, 56 F. Supp. 75 (D. Mass. 1944), judgment aff'd, 149 F.2d 204, 161 A.L.R. 847 (C.C.A. 1st Cir. 1945).

Mo.—State v. Champ, 477 S.W.2d 81 (Mo. 1972).

23 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921).

24 U.S.—Williamson v. Lee Optical of Oklahoma Inc., 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955); Railway Exp. Agency v. People of State of N.Y., 336 U.S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1949).

25 Kan.—Downtown Bar and Grill, LLC v. State, 294 Kan. 188, 273 P.3d 709 (2012).

As to different levels of scrutiny, generally, see §§ 1275 to 1279.

End of Document

16B C.J.S. Constitutional Law § 1268

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1268. Discrimination

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970 to 2979, 2981, 2982, 2985, 2991, 3000, 3034, 3035, 3037, 3039 to 3043, 3047, 3085, 3140, 3210

Discrimination in itself does not constitute a violation of equal protection; it is only invidious discrimination which constitutes such a violation.

Discrimination alone, irrespective of its basis or effect, is not the test of denial of equal protection of the laws by a statute,[1] and it is only the action which produces irrational, arbitrary, and therefore, invidious discrimination, that is prohibited.[2] However, invidious distinctions cannot be enacted without violating the Equal Protection Clause[3] regardless of the manner by which the discrimination is achieved or the nature of the interest affected.[4] Disparate impact standing alone does not establish a constitutional violation under the Equal Protection Clause; evidence of a policy's disparate impact may be probative in determining whether the policymaker harbored a discriminatory intent.[5]

To make out a claim for an equal protection violation based on disparate impact, the plaintiff must show (1) that a state action impacts his suspect class more than others and (2) that the state actor intended to discriminate against the suspect class.[6]

A violation of the Equal Protection Clause requires that the discrimination be intentional or purposeful,[7] and a law neutral on its face may be unconstitutional if motivated by a discriminatory purpose.[8] Such intent or purpose may appear on the face of the action taken with respect to a particular class or person or may be shown by extrinsic evidence but is not presumed.[9] However, a discriminatory intent or motive need not be the sole or dominant purpose[10] but need merely be one of the purposes motivating the alleged discriminator;[11] the decision maker must have selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.[12] It is thus not necessary, to establish an equal protection claim, for plaintiffs to prove that a discriminatory purpose was the sole reason for the government's action; rather, it is sufficient to show that a discriminatory purpose was the motivating factor in the government's decision or action.[13]

To sustain statutory discrimination as not violative of the Equal Protection Clause, it must be based on differences which are reasonably related to the purposes of the act in which it is found.[14] Discriminatory intent required to establish an equal protection violation implies that the decisionmaker selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.[15] A statute is invidiously discriminatory when it lays an unequal hand on those in the same class and same quality and not on another.[16]

The constitutional requirement of equal protection of the laws does not prevent the adjustment of legislation to differences in situations[17] and the making of a discrimination or distinction in legislation in respect of things that are different.[18] This rule is, however, subject to the limitation that the discrimination or distinction has a reasonable foundation or rational basis[19] and is not arbitrary[20] or invidious.[21]

The courts will not draw the dividing line between rational and arbitrary legislation with a view of remote possibilities.[22] To succeed on a claim that a legislative decision is violative of equal protection rights, a plaintiff must show that the legislation burdens a suspect class, affects fundamental rights, or is not rationally related to any legitimate goal of government.[23]

Purposeful discrimination.

Factors necessary to establish *Bivens* violation will vary with constitutional provision at issue, and where claim is invidious discrimination in contravention of First and Fifth Amendments, plaintiff must plead and prove that defendant acted with discriminatory purpose; under extant precedent, "purposeful discrimination" requires more than intent as volition or intent as awareness of consequences and instead involves decisionmaker's undertaking course of action because of, not merely in spite of, action's adverse effects upon identifiable group.[24]

The courts will refuse to set aside statutory discrimination as a denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it,[25] at least as long as it neither proceeds along suspect lines nor infringes fundamental constitutional rights,[26] or where the minimum scrutiny test is applicable.[27]

Inequality in a law does not alone or always invalidate the law.[28] To have that effect, it must be arbitrary, unreasonable, or oppressive.[29] Exact or perfect equality in a law is not required or always possible, and there is constitutional equality where there is practical equality or reasonable conformity in dealing with persons similarly circumstanced.[30]

Under the Equal Protection Clause of the Fourteenth Amendment, a state may rely on age as a proxy for other qualities, abilities, or characteristics that are relevant to the state's legitimate interests; that age proves to be an inaccurate proxy in any individual case is irrelevant.[31]

Remedies for past discrimination.

The equal protection guaranty does not prohibit states from taking appropriate measures to remedy the effects of past discrimination,[32] and when effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, a sharing of the burden by innocent parties is not impermissible.[33] The circumstances in which a state or the federal government discriminate against a minority based on an immutable characteristic of members of that minority, and occurring against an historical background of discrimination against persons who have that characteristic, create a presumption that the discrimination is a denial of the equal protection of the laws.[34]

Residents and nonresidents.

Equal protection does not presume distinction or differentiation between residents or nonresidents to be invidious but requires only that the distinction rationally promote the objectives of the regulation.[35] On the other hand, discrimination between residents and nonresidents based solely on the object of assisting the one class over the other economically cannot be upheld under the Equal Protection Clause.[36]

CUMULATIVE SUPPLEMENT

Cases:

To plead animus, a plaintiff asserting an equal protection claim must raise a plausible inference that an invidious discriminatory purpose was a motivating factor in the relevant decision. (Per Chief Justice Roberts, with three justices concurring and four justices concurring in the judgment.) U.S. Const. Amend. 5. Department of Homeland Security v. Regents of the University of California, 140 S. Ct. 1891 (2020).

On an equal protection claim, once a plaintiff demonstrates treatment different from others with whom he or she is similarly situated and that the unequal treatment is the result of intentional discrimination, the adequacy of the reasons for that discrimination are separately assessed at equal protection's second step under the appropriate standard of review. U.S.C.A. Const.Amend. 14. Hassan v. City of New York, 804 F.3d 277 (3d Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Williamson v. Lee Optical of Oklahoma Inc., 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955); Kotch v. Board of River Port Pilot Com'rs for Port of New Orleans, 330 U.S. 552, 67 S. Ct. 910, 91 L. Ed. 1093 (1947); Slavin v. Secretary of Dept. of Health, Ed. and Welfare, 486 F. Supp. 204 (S.D. N.Y. 1980).
Ariz.—Pastore v. Arizona Dept. of Economic Sec., 128 Ariz. 337, 625 P.2d 926 (Ct. App. Div. 1 1981).
A.L.R. Library
Equal Protection and Due Process Clause Challenges Based on Sex Discrimination—Supreme Court Cases, 178 A.L.R. Fed. 25.

2 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).
OK—Lafalier v. Lead-Impacted Communities Relocation Assistance Trust, 2010 OK 48, 237 P.3d 181 (Okla. 2010).

3 U.S.—Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973); Bernheim v. Litt, 79 F.3d 318 (2d Cir. 1996); AutoMaxx, Inc. v. Morales, 906 F. Supp. 394 (S.D. Tex. 1995).
Iowa—AutoMaxx, Inc. v. Morales, 906 F. Supp. 394 (S.D. Tex. 1995).

4 U.S.—Levy v. Parker, 346 F. Supp. 897 (E.D. La. 1972), judgment aff'd, 411 U.S. 978, 93 S. Ct. 2266, 36 L. Ed. 2d 955 (1973).

A.L.R. Library

Statutory or constitutional provision allowing widow but not widower to take against will and receive dower interests, allowances, homestead rights, or the like as denial of equal protection of law, 18 A.L.R.4th 910.

5 U.S.—Spurlock v. Fox, 716 F.3d 383, 293 Ed. Law Rep. 695 (6th Cir. 2013), cert. denied, 134 S. Ct. 436, 187 L. Ed. 2d 283 (2013).
Iowa—King v. State, 818 N.W.2d 1, 283 Ed. Law Rep. 390 (Iowa 2012).
Miss.—Griffin v. Mississippi Bd. of Bar Admissions, 113 So. 3d 1257 (Miss. 2013).

6 U.S.—Freeman v. Town of Hudson, 714 F.3d 29 (1st Cir. 2013).
Minn.—Odunlade v. City of Minneapolis, 823 N.W.2d 638 (Minn. 2012).

7 U.S.—SECSYS, LLC v. Vigil, 666 F.3d 678 (10th Cir. 2012); Rack Room Shoes v. U.S., 718 F.3d 1370 (Fed. Cir. 2013), cert. denied, 134 S. Ct. 2287, 189 L. Ed. 2d 172 (2014) and cert. denied, 134 S. Ct. 2289, 189 L. Ed. 2d 172 (2014); Murray v. Pittsburgh Bd. of Public Educ., 919 F. Supp. 838, 108 Ed. Law Rep. 593 (W.D. Pa. 1996).
Miss.—Griffin v. Mississippi Bd. of Bar Admissions, 113 So. 3d 1257 (Miss. 2013).

8 U.S.—Crawford v. Board of Educ. of City of Los Angeles, 458 U.S. 527, 102 S. Ct. 3211, 73 L. Ed. 2d 948, 5 Ed. Law Rep. 82 (1982); Joel v. City of Orlando, 232 F.3d 1353 (11th Cir. 2000); Gillespie v. City of Indianapolis, 13 F. Supp. 2d 811 (S.D. Ind. 1998), aff'd, 185 F.3d 693 (7th Cir. 1999).

9 U.S.—Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).

Treatment of class in less favorable manner

Okla.—Kirk v. Board of County Com'rs, Muskogee County, 1979 OK 80, 595 P.2d 1334 (Okla. 1979) (overruled on other grounds by, Presley v. Board of County Com'rs of Oklahoma County, 1999 OK 45, 981 P.2d 309 (Okla. 1999)).

10 U.S.—Jean v. Nelson, 711 F.2d 1455 (11th Cir. 1983), on reh'g, 727 F.2d 957 (11th Cir. 1984), judgment aff'd, 472 U.S. 846, 105 S. Ct. 2992, 86 L. Ed. 2d 664 (1985).

11 U.S.—Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. 1982), aff'd in part, rev'd in part on other grounds, 711 F.2d 1455 (11th Cir. 1983), on reh'g, 727 F.2d 957 (11th Cir. 1984), judgment aff'd, 472 U.S. 846, 105 S. Ct. 2992, 86 L. Ed. 2d 664 (1985).

12 U.S.—Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980); Bennett v. City of Eastpointe, 410 F.3d 810, 2005 FED App. 0247P (6th Cir. 2005); Moua v. City of Chico, 324 F. Supp. 2d 1132 (E.D. Cal. 2004); Antonelli v. New Jersey, 310 F. Supp. 2d 700 (D.N.J. 2004), judgment aff'd, 419 F.3d 267 (3d Cir. 2005); Pineda v. City of Houston, 124 F. Supp. 2d 1057 (S.D. Tex. 2000), dismissed, 252 F.3d 1355 (5th Cir. 2001) and aff'd, 291 F.3d 325 (5th Cir. 2002).

13 U.S.—L. Tarango Trucking v. County of Contra Costa, 181 F. Supp. 2d 1017 (N.D. Cal. 2001).

14 U.S.—Morey v. Doud, 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957) (overruled on other grounds by, City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976)).
Utah—Mountain Fuel Supply Co. v. Salt Lake City Corp., 752 P.2d 884 (Utah 1988).

15 U.S.—Red Earth LLC v. U.S., 657 F.3d 138 (2d Cir. 2011); Gibson v. Texas Dept. of Ins.—Div. of Workers' Compensation, 700 F.3d 227 (5th Cir. 2012).

16 Okla.—Kirk v. Board of County Com'rs, Muskogee County, 1979 OK 80, 595 P.2d 1334 (Okla. 1979) (overruled on other grounds by, Presley v. Board of County Com'rs of Oklahoma County, 1999 OK 45, 981 P.2d 309 (Okla. 1999)).

17 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).
Cal.—Abel v. Cory, 71 Cal. App. 3d 589, 139 Cal. Rptr. 555 (3d Dist. 1977).

18 U.S.—Tigner v. Texas, 310 U.S. 141, 60 S. Ct. 879, 84 L. Ed. 1124, 130 A.L.R. 1321 (1940); Whitney v. State Tax Commission of New York, 309 U.S. 530, 60 S. Ct. 635, 84 L. Ed. 909 (1940).
Ala.—Moody v. State ex rel. Payne, 344 So. 2d 160 (Ala. 1977).

19 U.S.—Ft. Smith Light & Traction Co. v. Board of Imp. of Paving Dist. No. 16 of City of Ft. Smith, Ark., 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927); City of New York v. Richardson, 473 F.2d 923 (2d Cir. 1973); Kirchberg v. Feenstra, 609 F.2d 727 (5th Cir. 1979), judgment aff'd, 450 U.S. 455, 101 S. Ct. 1195, 67 L. Ed. 2d 428 (1981).
Tenn.—Kelley v. 3-M Co., 639 S.W.2d 437 (Tenn. 1982).

20 U.S.—Smith v. Cahoon, 283 U.S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931); Kaufman v. Board of Trustees, Community College Dist. No. 508, 522 F. Supp. 90 (N.D. Ill. 1981).
Cal.—Barnhouse v. City of Pinole, 133 Cal. App. 3d 171, 183 Cal. Rptr. 881 (1st Dist. 1982) (holding modified on other grounds by, Geernaert v. Mitchell, 31 Cal. App. 4th 601, 37 Cal. Rptr. 2d 483 (1st Dist. 1995)).

21 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); Barr v. Galvin, 626 F.3d 99 (1st Cir. 2010).
Cal.—Abel v. Cory, 71 Cal. App. 3d 589, 139 Cal. Rptr. 555 (3d Dist. 1977).

22 U.S.—Queenside Hills Realty Co. v. Saxl, 328 U.S. 80, 66 S. Ct. 850, 90 L. Ed. 1096 (1946).
N.M.—Gallegos v. Homestake Min. Co., 97 N.M. 717, 1982-NMCA-052, 643 P.2d 281 (Ct. App. 1982).

23 U.S.—Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d 800 (W.D. Wis. 2004).

24 U.S.—Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 73 Fed. R. Serv. 3d 837 (2009).
Miss.—Griffin v. Mississippi Bd. of Bar Admissions, 113 So. 3d 1257 (Miss. 2013).

25 U.S.—Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970); McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Aguilar De Polanco v. U.S. Dept. of Justice, 398 F.3d 199 (2d Cir. 2005), for additional opinion, see 123 Fed. Appx. 19 (2d Cir. 2005); International Ass'n of Firefighters Local 3858 v. City of Germantown, 98 F. Supp. 2d 939 (W.D. Tenn. 2000).
Cal.—People v. Rhodes, 126 Cal. App. 4th 1374, 24 Cal. Rptr. 3d 834 (1st Dist. 2005).
Ill.—People v. Downin, 357 Ill. App. 3d 193, 293 Ill. Dec. 371, 828 N.E.2d 341 (3d Dist. 2005).

26 U.S.—Georgia Cemetery Ass'n, Inc. v. Cox, 353 F.3d 1319 (11th Cir. 2003).

27 N.M.—Richardson v. Carnegie Library Restaurant, Inc., 1988-NMSC-084, 107 N.M. 688, 763 P.2d 1153, 78 A.L.R.4th 513 (1988) (overruled by on other grounds, Trujillo v. City of Albuquerque, 1998-NMSC-031, 125 N.M. 721, 965 P.2d 305 (1998)).
Wash.—Campbell v. State, Department of Social and Health Services, 150 Wash. 2d 881, 83 P.3d 999 (2004).

28 Colo.—Naiden v. Epps, 867 P.2d 215 (Colo. App. 1993).
N.Y.—Matter of Burke's Estate, 111 Misc. 2d 296, 443 N.Y.S.2d 1003 (Sur. Ct. 1981), order aff'd, 57 N.Y.2d 382, 456 N.Y.S.2d 716, 442 N.E.2d 1227 (1982).

29 U.S.—Frost v. Corporation Commission, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483 (1929).
Ky.—Layson v. Brady, 576 S.W.2d 223 (Ky. Ct. App. 1978).

30 U.S.—Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942).
N.Y.—Suffolk County Court Emp. Ass'n, Inc. v. Office of Court Administration, 102 Misc. 2d 837, 425 N.Y.S.2d 947 (Sup 1980).

31 U.S.—Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000).

32 U.S.—Valentine v. Smith, 654 F.2d 503 (8th Cir. 1981).

33 U.S.—Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980).

34 U.S.—Baskin v. Bogan, 766 F.3d 648 (7th Cir. 2014), cert. denied, 135 S. Ct. 316, 190 L. Ed. 2d 142 (2014) and cert. denied, 135 S. Ct. 316, 190 L. Ed. 2d 142 (2014).

35 U.S.—County Bd. of Arlington County, Va. v. Richards, 434 U.S. 5, 98 S. Ct. 24, 54 L. Ed. 2d 4 (1977).

36 Alaska—Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975).

End of Document

16B C.J.S. Constitutional Law § 1269

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1269. Legislative classification

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035, 3036, 3039, 3041, 3043, 3057, 3065

The Equal Protection Clause of the Fourteenth Amendment does not constitute an absolute ban on legislative classifications; it is only required that the classification be reasonable and not arbitrary.

The Equal Protection Clause of the Fourteenth Amendment does not constitute an absolute ban upon legislative classifications;[1] however, the Constitution's guarantee of equality must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of that group.[2] Some classification is constitutionally permissible under the Equal Protection Clause,[3] but the mere fact of classification by a statute does not relieve it from the reach of the Equal Protection Clause,[4] and all classifications must comply with its requirements.[5]

The prohibition against denial of equal protection does not preclude a state or municipality from resorting to classification for purposes of legislation,[6] or regulation,[7] and confining such provisions to a certain class or classes.[8] However, the classifications must not establish invidious discrimination or attack a fundamental interest.[9] Moreover, the classifications may validly prescribe different sets of rules for different classes,[10] or geographical areas,[11] or discriminate in favor of, or against, a certain class.[12] However, while a state may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program such as health insurance, it may not, consistent with principles of equal protection, accomplish such a purpose

by invidious distinctions between classes of its citizens because equal protection demands that even limited financial resources be rationally allocated so that individuals in like circumstances are treated with parity.[13]

While the United States Supreme Court has never approved a classification that aids persons who are perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations, where such findings are made, the governmental interest in preferring members of the injured groups at the expense of others is substantial since the victims' legal rights must be vindicated.[14]

The general rule is, however, subject to the qualification that the classification or discrimination be reasonable, rather than arbitrary,[15] and rest on a real and substantial difference or distinction which bears a just, reasonable, or substantial relation to the legislation or the subject or object thereof.[16] Furthermore, in order for a classification to satisfy the dictates of equal protection, the legislation must operate equally, uniformly, and impartially on all persons or property within the same class.[17] As viewed from a different perspective, only those classifications which are invidious, arbitrary, or irrational offend the Equal Protection Clause.[18]

A statutory classification is not void as a denial of equal protection because it is not all encompassing or inclusive;[19] there is no constitutional requirement that the legislation or regulation must reach every class to which it might be applied.[20]

Classification is primarily for the legislature,[21] which, generally, has a wide discretion as to classifications.[22] Indeed, for purposes of an equal protection challenge, legislative decisions may be based on rational speculation unsupported by evidence or empirical data.[23] As long as the classification does not permit one to exercise a privilege while refusing it to another of like qualifications, under like conditions and circumstances, it is unassailable on equal protection grounds.[24] Thus, the Constitution permits the legislature wide latitude in defining which groups should be included and which should be excluded.[25] However, an interest in a governmental process or programs may be deemed fundamental, and thus not subject to such wide discretion, even though the government cannot be required to assure or even to determine what constitutes enjoyment of the process or program.[26] Moreover, a state may not protect the public fisc by drawing an objectionable classification.[27] For a classification to satisfy equal protection concerns, the legislature need not actually articulate at any time the purpose or rationale supporting its classification.[28]

Judicial inquiry.

In evaluating claims of violations of the equal protection guaranty, the court looks to the character of the classification, the individual interests affected by the classification, and the governmental interest asserted in support of the classification.[29] It follows that a court is not bound to consider only the stated purpose of a legislature in determining whether a statute violates equal protection.[30] So, the court will consider the facts and circumstances behind the law, the interest which the state claims to be protecting, and the interest of those who are disadvantaged by the classification.[31] Moreover, the courts must determine what classifications are created by the statute, whether they are treated disparately, and whether the disparate treatment serves a reasonable government objective.[32]

CUMULATIVE SUPPLEMENT

Cases:

Persons associated with Islam stated equal protection civil rights claim based on police surveillance program with facially discriminatory classification, where those persons alleged specifics about program, including when it was conceived, where municipality implemented it, why it was employed, and they articulated variety of methods by which surveillance was carried out. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983. Hassan v. City of New York, 804 F.3d 277 (3d Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—State of Fla. v. Mathews, 526 F.2d 319 (5th Cir. 1976); Shanker v. Helsby, 515 F. Supp. 871 (S.D. N.Y. 1981), judgment aff'd, 676 F.2d 31, 4 Ed. Law Rep. 17 (2d Cir. 1982); Lindquist v. Xerox Corp., 20 V.I. 227, 571 F. Supp. 470 (D.V.I. 1983).

2 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

3 Ariz.—Maryland Nat. Ins. Co. v. Ozzie Young Drilling Co., 22 Ariz. App. 195, 526 P.2d 402 (Div. 1 1974).
Me.—Lambert v. Wentworth, 423 A.2d 527 (Me. 1980).

4 N.Y.—People v. Sprague, 69 Misc. 2d 663, 330 N.Y.S.2d 421 (County Ct. 1972).

5 U.S.—French v. Heyne, 547 F.2d 994 (7th Cir. 1976).

6 U.S.—Morey v. Doud, 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957) (overruled on other grounds by, City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976)); Oquendo v. Insurance Co. of Puerto Rico, 388 F. Supp. 1030 (D.P.R. 1974).
Colo.—Qwest Corporation v. Colorado Division of Property Taxation, 2013 CO 39, 304 P.3d 217 (Colo. 2013).
Conn.—State v. Russo, 38 Conn. Supp. 426, 450 A.2d 857 (Super. Ct. 1982).

7 U.S.—Young v. U. S. Parole Com'n, 682 F.2d 1105 (5th Cir. 1982).

8 U.S.—Haviland v. Butz, 543 F.2d 169, 36 A.L.R. Fed. 615 (D.C. Cir. 1976).

9 Mo.—Kennedy v. Missouri Atty. Gen., 922 S.W.2d 68 (Mo. Ct. App. W.D. 1996).

10 Tex.—Prudential Health Care Plan, Inc. v. Commissioner of Ins., 626 S.W.2d 822 (Tex. App. Austin 1981), writ refused n.r.e., (Apr. 7, 1982).

11 Tex.—Click v. State, 745 S.W.2d 480 (Tex. App. Corpus Christi 1988), petition for discretionary review refused, (May 25, 1988).

12 U.S.—People of State of New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 49 S. Ct. 61, 73 L. Ed. 184, 62 A.L.R. 785 (1928).
Ariz.—Schrey v. Allison Steel Mfg. Co., 75 Ariz. 282, 255 P.2d 604 (1953).

13 Tex.—Bailey v. City of Austin, 972 S.W.2d 180 (Tex. App. Austin 1998).

14 U.S.—Regents of University of California v. Bakke, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978).

15 U.S.—Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971); Jamieson v. Robinson, 641 F.2d 138 (3d Cir. 1981); Williams v. Taylor, 677 F.2d 510 (5th Cir. 1982); Michael Reese Physicians and Surgeons, S.C. v. Quern, 606 F.2d 732 (7th Cir. 1979), on reh'g, 625 F.2d 764 (7th Cir. 1980).
Va.—Bradford v. Nature Conservancy, 224 Va. 181, 294 S.E.2d 866 (1982).

16 U.S.—Lehr v. Robertson, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983); Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); Cosner v. Robb, 541 F. Supp. 613 (E.D. Va. 1982).
Cal.—California Assn. of Retail Tobacconists v. State of California, 109 Cal. App. 4th 792, 135 Cal. Rptr. 2d 224 (4th Dist. 2003).
Ill.—People ex rel. Harris v. Parrish Oil Production, Inc., 249 Ill. App. 3d 664, 190 Ill. Dec. 780, 622 N.E.2d 810 (5th Dist. 1993).
Narrow distinction
The difference or distinction on which the classification rests need not be great.
U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).

17 U.S.—Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968).
Tex.—Mouton v. State, 627 S.W.2d 765 (Tex. App. Houston 1st Dist. 1981).

18 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Fasi v. Cayetano, 752 F. Supp. 942 (D. Haw. 1990).
Ala.—Field v. Field, 382 So. 2d 1132 (Ala. Civ. App. 1980).

Test

Test for determining if classifications violate equal protection is whether the difference in treatment invidiously discriminates.

U.S.—Johnson v. Paparozzi, 219 F. Supp. 2d 635 (D.N.J. 2002).

19 U.S.—Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976); Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); Richardson v. Secretary of Labor, 689 F.2d 632 (6th Cir. 1982); Gold Cross Ambulance v. City of Kansas City, 538 F. Supp. 956 (W.D. Mo. 1982), judgment aff'd, 705 F.2d 1005 (8th Cir. 1983) and (disapproved of on other grounds by, Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985)).
Kan.—Matter of Hay, 263 Kan. 822, 953 P.2d 666 (1998).

20 Mo.—State v. Allen, 905 S.W.2d 874, 103 Ed. Law Rep. 862 (Mo. 1995).
N.Y.—Wells v. State, 130 Misc. 2d 113, 495 N.Y.S.2d 591 (Sup 1985), judgment aff'd, 134 A.D.2d 874, 521 N.Y.S.2d 604 (4th Dep't 1987).

21 Conn.—Frazier v. Manson, 176 Conn. 638, 410 A.2d 475 (1979).

22 U.S.—Parham v. Hughes, 441 U.S. 347, 99 S. Ct. 1742, 60 L. Ed. 2d 269 (1979); Chatham v. Jackson, 613 F.2d 73 (5th Cir. 1980); U.S. v. Weatherford, 471 F.2d 47 (7th Cir. 1972); National Tank Truck Carriers, Inc. v. Burke, 535 F. Supp. 509 (D.R.I. 1982), judgment aff'd, 698 F.2d 559 (1st Cir. 1983).
Iowa—Bowers v. Polk County Bd. of Supervisors, 638 N.W.2d 682 (Iowa 2002).
N.J.—Brown v. State, 356 N.J. Super. 71, 811 A.2d 501 (App. Div. 2002).

Considerable leeway

The Equal Protection Clause allows states considerable leeway to enact legislation that may appear to affect similarly situated people differently.

U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Mallory v. Harkness, 895 F. Supp. 1556 (S.D. Fla. 1995).
La.—Frederick v. Ieyoub, 762 So. 2d 144 (La. Ct. App. 1st Cir. 2000), writ denied, 789 So. 2d 581 (La. 2001).
Tex.—Faerman v. State, 966 S.W.2d 843 (Tex. App. Houston 14th Dist. 1998).

23 U.S.—Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d 800 (W.D. Wis. 2004).

24 Cal.—Lackner v. St. Joseph Convalescent Hospital, Inc., 106 Cal. App. 3d 542, 165 Cal. Rptr. 198 (1st Dist. 1980).

25 U.S.—U.S. v. Smallbear, 368 F. Supp. 2d 1260 (D.N.M. 2005).

26 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982).

27 U.S.—Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); Strong v. Collatos, 450 F. Supp. 1356 (D. Mass. 1978), judgment aff'd, 593 F.2d 420 (1st Cir. 1979).

Saving of welfare costs as not justification

U.S.—Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)); Medora v. Colautti, 602 F.2d 1149 (3d Cir. 1979); Chatman v. Barnes, 357 F. Supp. 9 (N.D. Okla. 1973).

28 U.S.—Armour v. City of Indianapolis, Ind., 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).

29 U.S.—Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); Brenden v. Independent School Dist. 742, 477 F.2d 1292, 23 A.L.R. Fed. 649 (8th Cir. 1973); Burke v. U.S., 480 F.2d 279 (9th Cir. 1973); Robertson v. Bartels, 150 F. Supp. 2d 691 (D.N.J. 2001), adhered to, 890 F. Supp. 2d 519 (D.N.J. 2012); Pitts v. Black, 608 F. Supp. 696 (S.D. N.Y. 1984).
Ark.—Skelton v. Skelton, 339 Ark. 227, 5 S.W.3d 2 (1999).
Conn.—State v. Long, 268 Conn. 508, 847 A.2d 862 (2004).

30 Kan.—Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo., 742 F.3d 807 (8th Cir. 2013).

31 U.S.—Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973); Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583

(1969); Biener v. Calio, 361 F.3d 206 (3d Cir. 2004); Crowe By and Through Crowe v. Wigglesworth, 623 F. Supp. 699 (D. Kan. 1985).

Tex.—Parvin v. Dean, 7 S.W.3d 264 (Tex. App. Fort Worth 1999) (rejected on other grounds by, Fort Worth Osteopathic Hosp., Inc. v. Reese, 148 S.W.3d 94 (Tex. 2004)).

32 Kan.—Villa v. Kansas Health Policy Authority, 296 Kan. 315, 291 P.3d 1056 (2013).

Utah—State v. Merrill, 2005 UT 34, 114 P.3d 585 (Utah 2005).

End of Document

16B C.J.S. Constitutional Law § 1270

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1270. Legislative classification—Corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2979, 2980, 2985, 3370, 3682, 3690, 3691, 3697, 3699, 3701 to 3705, 3711

Discrimination between foreign and domestic corporations, or between corporations and natural persons, is not necessarily a denial of equal protection.

The drawing of a distinction between corporations and individuals is a valid basis of legislative classification, and is not a denial of the equal protection guaranty,[1] where there is a rational basis for the classification.[2] It is not necessarily a denial of equal protection to subject corporations to reasonable legislative regulation,[3] to classify them according to their business,[4] and subject different classes or kinds of corporations to different rules or regulations.[5] However, it may be a denial of equal protection of the laws to discriminate in legislation between different corporations, or between corporations and natural persons engaged in the same business,[6] as where the only distinction between the "persons" affected by a statute and those not affected is that one class consists of natural persons and the other of artificial persons.[7]

Where foreign and domestic corporate defendants are treated identically under state statutes and the state's constitution, there is no violation of the Equal Protection Clause.[8] Thus, a state may not impose more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations unless the discrimination between the foreign and

domestic corporations bears a rational relation to a legitimate state purpose.[9] However, a statute providing for revocation of domestic corporations' charters and foreign corporations' licenses as penalties for violation of statutes prohibiting contracts or combinations in restraint of trade does not deny a foreign corporation equal protection of the law merely because the loss sustained by the foreign corporation would far exceed that of a domestic corporation.[10] Where there is no other ground of distinction, a classification of corporations within the state, for the purpose of legislative regulation, into foreign corporations and domestic corporations is an unreasonable and arbitrary classification amounting to a denial of equal protection.[11]

On the other hand, a state legislature may distinguish between foreign and domestic corporations for some purposes,[12] and a legislative discrimination between such corporations[13] or between foreign corporations and natural persons[14] will be upheld where it has a reasonable basis and is not arbitrary.

The ultimate test of validity of a legislative discrimination between foreign and domestic corporations is not whether there are differences between them but whether such differences are pertinent to the subject of classification and have a rational relationship to the legislative command.[15] The expulsion of a foreign corporation already within the state does not deny it equal protection even though the expulsion is effected by a special act.[16]

Footnotes

1 U.S.—Mallinckrodt Chemical Works v. State of Missouri ex rel. Jones, 238 U.S. 41, 35 S. Ct. 671, 59 L. Ed. 1192 (1915).
N.Y.—People v. Shore Realty Corp., 127 Misc. 2d 419, 486 N.Y.S.2d 124 (Dist. Ct. 1984).

2 N.Y.—People v. Shore Realty Corp., 127 Misc. 2d 419, 486 N.Y.S.2d 124 (Dist. Ct. 1984).

3 U.S.—St. Mary's Franco-American Petroleum Co. v. State of West Virginia, 203 U.S. 183, 27 S. Ct. 132, 51 L. Ed. 144 (1906).

4 Tex.—Babcock v. State, 668 S.W.2d 857 (Tex. App. Austin 1984), writ refused n.r.e., (June 27, 1984).

5 Mich.—Blue Cross and Blue Shield of Michigan v. Milliken, 422 Mich. 1, 367 N.W.2d 1 (1985).
Pa.—H.P. Brandt Funeral Home, Inc. v. Com., Dept. of State, Bureau of Professional and Occupational Affairs, State Bd. of Funeral Directors, 78 Pa. Commw. 206, 467 A.2d 106 (1983).

6 Md.—Aero Motors, Inc. v. Administrator, Motor Vehicle Administration, 274 Md. 567, 337 A.2d 685 (1975).
Rational basis lacking
Ohio—Powell v. City Nat. Bank & Trust Co., 2 Ohio App. 3d 1, 440 N.E.2d 560 (10th Dist. Franklin County 1981).

7 U.S.—Frost v. Corporation Commission, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483 (1929).

8 Ala.—Ex parte Southern Ry. Co., 556 So. 2d 1082 (Ala. 1989).

9 U.S.—Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985).
Fla.—American Southern Ins. Co. v. State, Dept. of Revenue, 674 So. 2d 810 (Fla. 1st DCA 1996).
Pa.—Transcontinental Gas Pipe Line Corp. v. Com., 153 Pa. Commw. 60, 620 A.2d 614 (1993), opinion adopted, 157 Pa. Commw. 674, 630 A.2d 960 (1993).

10 Wis.—State v. Golden Guernsey Dairy Co-op., 257 Wis. 254, 43 N.W.2d 31 (1950).

11 U.S.—Herndon v. Chicago, R.I. & P. Ry. Co., 218 U.S. 135, 30 S. Ct. 633, 54 L. Ed. 970 (1910).
Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).

12 Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).
Differing procedures for service of process on foreign corporations as constitutional
S.D.—State v. American Bankers Ins. Co., 374 N.W.2d 609 (S.D. 1985).

13 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).
Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).

14 U.S.—Crescent Cotton Oil Co. v. State of Mississippi, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).

15 U.S.—Metropolitan Cas. Ins. Co. of New York v. Brownell, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935).

16 U.S.—National Council, Junior Order United American Mechanics of U.S. v. State Council of Virginia, Junior Order United American Mechanics of Virginia, 203 U.S. 151, 27 S. Ct. 46, 51 L. Ed. 132 (1906).

End of Document

16B C.J.S. Constitutional Law § 1271

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1271. Unequal or discriminatory enforcement or application

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3045

A law nondiscriminatory or fair on its face may be struck down as a denial of equal protection if it is unreasonably, unfairly, or arbitrarily discriminatory in its operation or enforcement.

The guaranty of equal protection is not limited to the enactment of fair and impartial legislation but necessarily extends to its application.[1] Equal protection prevents the inequitable administration of laws by both state and federal courts.[2] A law nondiscriminatory or fair on its face may be struck down as a denial of equal protection if it is unreasonably, unfairly, or arbitrarily discriminatory in its operation or enforcement.[3] However, mere unequal application of statute which is fair on its face does not violate equal protection; only purposeful or intentional discrimination is prohibited.[4] A finding of the denial of equal protection may be appropriate where waivers of a rule are not granted with consistency and no explanation is given for the disparity of treatment.[5]

Except where the discrimination is invidious and purposeful,[6] the conscious exercise of some selectivity in the enforcement of law is not in itself a constitutional violation where the selection is not deliberately based upon an unjustifiable standard.[7] The possibility that a statute may be discriminatorily applied does not constitute a violation of the Equal Protection Clause.[8]

Error or mistake in the application of the law,[9] or a minor difference in the application of laws to different groups,[10] does not necessarily constitute a violation of the Equal Protection Clause. Moreover, the prospective application of a judicial ruling does not deny equal protection of the law.[11]

Generally, to establish a violation of equal protection by the failure to enforce a statute or regulation, or by unequal enforcement, the discriminatory acts must have been intentional or purposeful,[12] which may be shown by a pattern of discrimination or arbitrariness.[13]

Footnotes

1 U.S.—U.S. v. Falk, 479 F.2d 616 (7th Cir. 1973); Chrysler Rail Transp. Corp. v. Holt, 845 F. Supp. 463 (W.D. Mich. 1994); Suarez v. Junta Dental Examinadora (Dental Examining Bd.), 580 F. Supp. 334 (D.P.R. 1984), judgment aff'd, 745 F.2d 44 (1st Cir. 1984).
N.C.—State v. Spicer, 299 N.C. 309, 261 S.E.2d 893 (1980).

2 U.S.—Zachery v. Wheeler, 511 F. Supp. 591, 8 Fed. R. Evid. Serv. 1101 (E.D. Tenn. 1981).
Mass.—Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 844 N.E.2d 623 (2006).

3 U.S.—Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970); Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891, 55 A.L.R.2d 1055 (1956); Arrington v. Dickerson, 915 F. Supp. 1503 (M.D. Ala. 1995); Minneapolis Auto Parts Co., Inc. v. City of Minneapolis, 572 F. Supp. 389 (D. Minn. 1983).
Ind.—Helton v. State, 624 N.E.2d 499 (Ind. Ct. App. 1993).
N.Y.—People v. Kennedy, 128 Misc. 2d 937, 491 N.Y.S.2d 968 (Sup 1985).
Intentional discrimination
A law fair on its face may be shown to violate equal protection if it is intentionally enforced in a discriminatory manner.
N.H.—State v. Addison, 165 N.H. 381, 87 A.3d 1 (2013).
S.C.—Stuckey v. State Budget and Control Bd., 339 S.C. 397, 529 S.E.2d 706 (2000).

4 N.Y.—People v. O'Grady, 175 Misc. 2d 61, 667 N.Y.S.2d 895 (N.Y. City Crim. Ct. 1997).

5 U.S.—Louis v. Supreme Court of Nevada, 490 F. Supp. 1174 (D. Nev. 1980).

6 U.S.—U.S. v. Lewis, 355 F. Supp. 1132 (S.D. Ga. 1973).

7 U.S—Towery v. Brewer, 672 F.3d 650 (9th Cir. 2012); U.S. v. Moon Lake Electric Ass'n, Inc., 45 F. Supp. 2d 1070 (D. Colo. 1999); Falkiewicz v. Grayson, 271 F. Supp. 2d 942 (E.D. Mich. 2003), judgment aff'd, 110 Fed. Appx. 491 (6th Cir. 2004); Salem Blue Collar Workers Ass'n v. City of Salem, 832 F. Supp. 852 (D.N.J. 1993), order aff'd, 33 F.3d 265 (3d Cir. 1994); U.S. v. American Elec. Power Service Corp., 258 F. Supp. 2d 804 (S.D. Ohio 2003).
Conn.—State v. Angel C., 245 Conn. 93, 715 A.2d 652 (1998).
La.—Plaquemines Parish Government v. River/Road Const., Inc., 828 So. 2d 16 (La. Ct. App. 4th Cir. 2002), writ denied, 829 So. 2d 1055 (La. 2002).

8 U.S.—Blount v. Smith, 440 F. Supp. 528 (M.D. Pa. 1977).

9 U.S.—Powell v. City of Montgomery, 56 F. Supp. 2d 1328 (M.D. Ala. 1999), aff'd, 245 F.3d 793 (11th Cir. 2000); Manos v. Caira, 162 F. Supp. 2d 979 (N.D. Ill. 2001); Ropoleski v. Rairigh, 886 F. Supp. 1356 (W.D. Mich. 1995).

10 U.S.—Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973); Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968); Green Party of State of New York v. Weiner, 216 F. Supp. 2d 176 (S.D. N.Y. 2002).

11 U.S.—Prater v. Maggio, 686 F.2d 346 (5th Cir. 1982).

12 U.S.—Veney v. Wyche, 293 F.3d 726 (4th Cir. 2002); Schroeder v. Hamilton School Dist., 282 F.3d 946, 162 Ed. Law Rep. 54 (7th Cir. 2002); Kuhn v. Thompson, 304 F. Supp. 2d 1313 (M.D. Ala. 2004); Little v. Terhune, 200 F. Supp. 2d 445 (D.N.J. 2002).
N.Y.—Fields v. Village of Sag Harbor, 92 A.D.3d 718, 938 N.Y.S.2d 611 (2d Dep't 2012).

N.C.—In re Battle, 166 N.C. App. 240, 601 S.E.2d 253 (2004).
Ohio—Mays v. Board Of Trustees Of Miami Tp., 2002-Ohio-3303, 2002 WL 1396008 (Ohio Ct. App. 2d Dist. Montgomery County 2002).

13 U.S.—U.S. v. Moore, 644 F.3d 553 (7th Cir. 2011).

End of Document

16B C.J.S. Constitutional Law § 1272

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1272. Equality in grant of benefits or imposition of burdens

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3039, 3043, 3784

The Equal Protection Clause of the Fourteenth Amendment requires that all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed.

The Equal Protection Clause of the Fourteenth Amendment, and of state constitutions, requires that all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed,[1] and any discrimination must be justified by reference to a constitutionally recognized reason.[2] Equal protection issues focus upon classifications within a statutory scheme that allocate benefits or burdens differently among the categories of persons affected.[3] Thus, when a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.[4] Legislation which singles out one class for special burdens or as beneficiaries from which all others are exempt denies equal protection,[5] and the conferring of particular privileges upon an arbitrarily selected class of persons constitutes a special law which is tantamount to a denial of equal protection.[6] The legislature must, under principles of equal protection, act even-handedly when it grants benefits to one group and denies them to another.[7] The failure to accord equal protection to all persons may not be justified by the sophistry that the benefit from the legislature is a privilege and not a right.[8]

On the other hand, some courts have held that, in apportioning limited resources, governments need not provide the same level of benefits to all recipients, and the failure to do so does not violate equal protection.[9]

The Equal Protection Clause does not require that legislation not classify when imposing special burdens upon or granting special benefits to distinct groups,[10] and equal protection is not denied by the making of the same grant to persons of varying economic need.[11] The Equal Protection Clause does not require absolutely equal treatment of all similarly situated persons or the absolutely equal division of governmental benefits.[12] The fact that legislation might impose greater burdens on one class of citizens does not in itself violate the Equal Protection Clause.[13] It is not essential that benefits denied or burdens bestowed by a different treatment be related to constitutional guaranties.[14] Neither federal nor state constitutional equal protection clauses requires mathematical symmetry be attained between benefits received and payment for those benefits.[15]

A court sustaining an equal protection claim has two remedial alternatives: it may either declare the statute a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion.[16]

Equal protection is not denied because essential state services may indirectly burden some citizens more than others[17] or because some persons find it hard or impossible to comply with the precedent conditions for the enjoyment of a state privilege.[18]

CUMULATIVE SUPPLEMENT

Cases:

There are two remedial alternatives when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit: a court may either declare the statute a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. U.S.C.A. Const.Amend. 5. Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

When a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit, and the right invoked is that to equal treatment, the appropriate remedy is a mandate of equal treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class. U.S.C.A. Const.Amend. 5. Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

The choice between the two alternative remedial outcomes that are possible when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit, namely extension of benefits or nullification, is governed by the legislature's intent, as revealed by the statute at hand. U.S.C.A. Const.Amend. 5. Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

Ordinarily, extension of benefits, rather than nullification, is the proper course when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit. U.S.C.A. Const.Amend. 5. Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

In considering whether the legislature would have struck an exception and applied the general rule equally to all, or instead, would have broadened the exception to cure the equal protection violation, for purposes of deciding between extension of benefits and nullification as a remedy, a court should measure the intensity of commitment to the residual policy, that is, the main rule, not the exception, and consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation. U.S.C.A. Const.Amend. 5. Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

The relief the complaining party requests does not circumscribe the inquiry into whether extension of benefits, as opposed to nullification, is the proper course when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit. U.S.C.A. Const.Amend. 5. Sessions v. Morales-Santana, 137 S. Ct. 1678 (2017).

[END OF SUPPLEMENT]

Footnotes

1 Ala.—Ellard v. State, 474 So. 2d 743 (Ala. Crim. App. 1984), judgment aff'd, 474 So. 2d 758 (Ala. 1985).
Privileges
A privilege created by statute must be available to all on the same terms.
Or.—Hunter v. State, 306 Or. 529, 761 P.2d 502 (1988).

2 U.S.—Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), judgment aff'd, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).

3 Idaho—State, Dept. of Health and Welfare ex rel. Martz v. Reid, 124 Idaho 908, 865 P.2d 999 (Ct. App. 1993).

4 U.S.—Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 (1985); Town of Ball v. Rapides Parish Police Jury, 746 F.2d 1049 (5th Cir. 1984).
Wash.—State v. Marintorres, 93 Wash. App. 442, 969 P.2d 501 (Div. 2 1999).

5 U.S.—Weinberger v. Salfi, 422 U.S. 749, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975); Lindenau v. Alexander, 663 F.2d 68 (10th Cir. 1981).

6 Cal.—California Federation of Teachers, AFL-CIO v. Oxnard Elementary Schools, 272 Cal. App. 2d 514, 77 Cal. Rptr. 497 (2d Dist. 1969).

7 Ariz.—Jackson v. Tangreen, 199 Ariz. 306, 18 P.3d 100 (Ct. App. Div. 1 2000).

8 U.S.—Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963); Walsh v. Louisiana High School Athletic Ass'n, 616 F.2d 152 (5th Cir. 1980).

9 Miss.—Mosby v. Moore, 716 So. 2d 551 (Miss. 1998).

10 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Usher v. Schweiker, 666 F.2d 652 (1st Cir. 1981).
Remedy
When the right invoked is that of equal treatment, the appropriate remedy is the mandate of equal treatment, a result that can be accomplished by withdrawal or benefits from the favored class as well as by the extension of benefits to the excluded class.
U.S.—Heckler v. Mathews, 465 U.S. 728, 104 S. Ct. 1387, 79 L. Ed. 2d 646 (1984); Dickerson v. Bailey, 336 F.3d 388 (5th Cir. 2003).

11 U.S.—McMillan v. Board of Ed. of State of N. Y., 430 F.2d 1145 (2d Cir. 1970); Halderman v. Pittenger, 391 F. Supp. 872 (E.D. Pa. 1975).

12 U.S.—Raycom Nat., Inc. v. Campbell, 361 F. Supp. 2d 679 (N.D. Ohio 2004).

13 Pa.—In re Williams, 210 Pa. Super. 388, 234 A.2d 37 (1967), order aff'd, 432 Pa. 44, 246 A.2d 356 (1968).

14 U.S.—French v. Heyne, 547 F.2d 994 (7th Cir. 1976); Seide v. Prevost, 536 F. Supp. 1121 (S.D. N.Y. 1982).

15 Colo.—City of Montrose v. Public Utilities Com'n of State of Colo., 732 P.2d 1181 (Colo. 1987).

16 U.S.—U.S. v. Cervantes-Nava, 281 F.3d 501 (5th Cir. 2002).
Ill.—In re R.C., 195 Ill. 2d 291, 253 Ill. Dec. 699, 745 N.E.2d 1233 (2001).

17 Ga.—Lindsey v. Guhl, 237 Ga. 567, 229 S.E.2d 354 (1976).

18 S.C.—Bauer v. South Carolina State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978).

End of Document

16B C.J.S. Constitutional Law § 1273

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1273. Absence of right to uniformity in judicial decisions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3046

There is no constitutional right, through the Equal Protection Clause or otherwise, to consistent decisions from an appellate court.

There is no constitutional right, through the Equal Protection Clause or otherwise, to consistent decisions from an appellate court.[1] Nor does equal protection under the law mean that the trial court is obligated to come to some rough equivalency in the number of rulings favoring each side of a dispute.[2] Hence, as a general rule, the Equal Protection Clause does not compel uniformity or absolute correctness of state court rulings or decisions.[3] Equal Protection Clause does not assure immunity from judicial error[4] or uniformity of judicial decisions,[5] so that disagreement between circuits on the interpretation of a statute is a matter which either the Supreme Court or Congress should resolve, but does not violate the equal protection rights of the persons subjected to a more burdensome interpretation.[6] On the other hand, equal protection guarantees are not limited to legislative classifications, and actions of the state courts are likewise subject to the restraints of the Equal Protection Clause.[7] The standards usually employed to scrutinize legislation for equal protection challenges are just as applicable to judicially fashioned law.[8]

The prospective or retroactive[9] application of a decision does not deny equal protection of the law to persons affected previous to the ruling.

Footnotes

1 U.S.—Sanders v. Moore, 156 F. Supp. 2d 1301 (M.D. Fla. 2001).

2 Alaska—Skinner v. Hagberg, 183 P.3d 486 (Alaska 2008).

3 U.S.—Milwaukee Electric Ry. & Light Co. v. State of Wisconsin ex rel. City of Milwaukee, 252 U.S. 100, 40 S. Ct. 306, 64 L. Ed. 476, 10 A.L.R. 892 (1920).

4 U.S.—Little v. Crawford, 449 F.3d 1075 (9th Cir. 2006); U. S. ex rel. Siegal v. Follette, 290 F. Supp. 632 (S.D. N.Y. 1968).

5 U.S.—Valtsakis v. C.I.R., 801 F.2d 622 (2d Cir. 1986); Little v. Crawford, 449 F.3d 1075 (9th Cir. 2006).

6 U.S.—Hawkins v. Agricultural Marketing Service, Dept. of Agriculture, U.S., 10 F.3d 1125 (5th Cir. 1993).

7 Cal.—People v. Scott, 64 Cal. App. 4th 550, 75 Cal. Rptr. 2d 315 (2d Dist. 1998).

8 La.—Spicuzza v. Fonseca, 537 So. 2d 272 (La. Ct. App. 4th Cir. 1988).

9 N.C.—State v. Rivens, 299 N.C. 385, 261 S.E.2d 867 (1980).

16B C.J.S. Constitutional Law § 1274

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

B. Nature and Scope of Prohibitions

§ 1274. Exercise of police power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3044, 3058, 3720

The prohibition of the Fourteenth Amendment against denial of equal protection of the laws does not deprive the states, or the political subdivisions thereof, of their power, commonly called the police power, to pass laws for the protection of the public health, safety, welfare, or morals.

The prohibition of the Fourteenth Amendment against denial of equal protection of the laws does not deprive the states, or the political subdivisions thereof, of their power, commonly called the police power,[1] to pass laws for the protection of the public health, safety, welfare, or morals,[2] and indeed, the State has wide discretion to do so under the Equal Protection Clause.[3] Furthermore, it does not interfere with the proper exercise of that power.[4]

However, according to the weight of authority, an exercise of the police power is subject to the constitutional limitation that no state shall deny the equal protection of the laws to any person within its jurisdiction;[5] and the Fourteenth Amendment invalidates enactments that are arbitrary, unreasonable, and unrelated to the public purpose sought to be attained.[6] In other words, equal protection requires that the exercise of police power be wholly free of unreason and arbitrariness.[7] It is necessary that a police regulation shall apply equally or uniformly to all persons similarly situated or within a class.[8] Thus, the lawmaking authority may, under its police power, enact regulations that are not all-embracing, and it may legislate with reference to degrees of evil

and to situations in which the evil is demonstrably more harmful, without denying equal protection of the law;[9] but an exercise of the police power must not be discriminatory in operation.[10]

The Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution does not take from a state or municipal corporation the power to classify in the adoption of police laws or regulations[11] but admits of the exercise of a wide or broad scope of discretion in that regard.[12]

Footnotes

1 Del.—In re Auditorium, Inc., 46 Del. 430, 84 A.2d 598 (Super. Ct. 1951).

2 Fla.—Florida League of Cities, Inc. v. Department of Environmental Regulation, 603 So. 2d 1363 (Fla. 1st DCA 1992).
Ohio—St. Ann's Hosp. v. Arnold, 109 Ohio App. 3d 562, 672 N.E.2d 743 (10th Dist. Franklin County 1996).
Pa.—Pennsylvania Turnpike Com'n v. Com., 855 A.2d 923 (Pa. Commw. Ct. 2004), as amended, (Aug. 4, 2004) and judgment aff'd, 587 Pa. 347, 899 A.2d 1085 (2006).

3 U.S.—Lee v. State, 869 F. Supp. 1491 (D. Or. 1994).
Colo.—Buckley Powder Co. v. State, 70 P.3d 547 (Colo. App. 2002).

4 U.S.—Lacoste v. Department of Conservation of State of Louisiana, 263 U.S. 545, 44 S. Ct. 186, 68 L. Ed. 437 (1924); Chambers v. Bachtel, 55 F.2d 851 (C.C.A. 5th Cir. 1932).
Kan.—Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974).

5 U.S.—Oyama v. California, 332 U.S. 633, 68 S. Ct. 269, 92 L. Ed. 249 (1948); Szeto v. Louisiana State Bd. of Dentistry, 508 F. Supp. 268 (E.D. La. 1981).
Fla.—Junco v. State Bd. of Accountancy, 390 So. 2d 329 (Fla. 1980).

6 Ill.—Rawlings v. Illinois Dept. of Law Enforcement, 73 Ill. App. 3d 267, 29 Ill. Dec. 333, 391 N.E.2d 758 (3d Dist. 1979).

7 N.J.—515 Associates v. City of Newark, 132 N.J. 180, 623 A.2d 1366 (1993).

8 U.S.—Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945); Berry v. Arapahoe and Shoshone Tribes, 420 F. Supp. 934 (D. Wyo. 1976).
Cal.—Elysium Institute, Inc. v. County of Los Angeles, 232 Cal. App. 3d 408, 283 Cal. Rptr. 688 (2d Dist. 1991).
Neb.—Distinctive Printing and Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

9 Fla.—Pacheco v. Pacheco, 246 So. 2d 778 (Fla. 1971).

10 U.S.—Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948).
Ariz.—State v. Norcross, 26 Ariz. App. 115, 546 P.2d 840 (Div. 1 1976).

11 U.S.—Morey v. Doud, 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957) (overruled on other grounds by, City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976)); Queenside Hills Realty Co. v. Saxl, 328 U.S. 80, 66 S. Ct. 850, 90 L. Ed. 1096 (1946).
As to legislative classifications, generally, see § 1269.

12 U.S.—City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); Morey v. Doud, 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957) (overruled on other grounds by, City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976)); Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority, 825 F.2d 367 (11th Cir. 1987).
Ill.—People v. Toliver, 251 Ill. App. 3d 1092, 191 Ill. Dec. 290, 623 N.E.2d 880 (2d Dist. 1993).

16B C.J.S. Constitutional Law VI XVI C Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
West's A.L.R. Digest, Constitutional Law 2970, 2972 to 2975, 2977 to 2979, 2981, 2982, 2985, 2991, 3032, 3035, 3036, 3039, 3041, 3043, 3050, 3057, 3060 to 3065, 3067, 3070 to 3072, 3073(1), 3074 to 3077, 3079, 3080, 3082, 3103, 3128, 3142, 3165, 3180, 3184, 3188, 3192, 3193, 3200, 3205, 3213, 3225, 3241, 3315, 3335 to 3437, 3475 to 3477, 3735, 3736, 3738 to 3740, 3742, 3765 to 3767, 3784, 3786, 4866

End of Document

16B C.J.S. Constitutional Law § 1275

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

§ 1275. Strict scrutiny test

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970, 2972 to 2975, 2977 to 2979, 2981, 2982, 2985, 2991, 3035, 3036, 3039, 3041, 3043, 3050, 3051 to 3057, 3060 to 3064, 3065, 3067, 3070, 3071, 3073(1), 3074, 3077, 3079, 3080, 3082, 3103, 3128, 3142, 3165, 3180, 3184, 3188, 3192, 3193, 3200, 3205, 3213, 3225, 3241, 3315, 3335, 3336, 3437, 3475 to 3477, 3735, 3736, 3738 to 3740, 3742, 3765 to 3767, 3784, 3786, 4866

Equal protection analysis requires strict scrutiny of a legislative classification where the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.

Equal protection judicial analysis requires strict scrutiny of a legislative classification where, and only where, the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.[1] A "suspect class" requiring the application of the strict scrutiny standard is one saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.[2] Also, a "suspect class" has been further characterized as one marked by immutable characteristics grounded in the accident of birth and resulting in a stigma of inferiority or second-class citizenship.[3] A mere receipt of different treatment by different individuals does not create a suspect category.[4]

In order for the strict scrutiny analysis to be applicable because a fundamental interest is involved, the right asserted must be one that is explicitly or implicitly guaranteed by the Constitution,[5] and the classification must significantly interfere with the exercise of that right.[6] Strict scrutiny of a statute does not apply whenever Congress subsidizes some but not all speech,[7] and a decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus, is not subject to strict scrutiny.[8] The importance of a right, or of a service, by the state to the individual does not determine whether it is to be regarded as fundamental,[9] and the severity of the sanction or detriment prescribed by the classification provides no key to whether the interest infringed is fundamental.[10]

To withstand the strict scrutiny test, the classification challenged must be necessary to promote a compelling state interest,[11] important or legitimate governmental interests not being sufficient to justify the classification,[12] and the means employed must be the least intrusive or restrictive available and must be necessary to achieve the compelling state interest or, in other words, the desired end.[13]

The burden, which is a heavy one,[14] is upon the state to establish that it has a compelling interest which justifies the law or classification[15] and that the distinctions or classifications drawn by the law are necessary to further their purpose.[16] Furthermore, the State must establish that there are no less restrictive or onerous alternatives available[17] and that the statute, or its classification, is precisely tailored or narrowly drawn to serve or advance a compelling governmental interest.[18]

Rules which are discriminatorily applied are subject to strict scrutiny, not rational basis review.[19]

CUMULATIVE SUPPLEMENT

Cases:

When otherwise eligible recipients are disqualified from a public benefit solely because of their religious character, the court must apply strict scrutiny under the Free Exercise Clause. U.S. Const. Amend. 1. Espinoza v. Montana Department of Revenue, 140 S. Ct. 2246 (2020).

A law does not advance an interest of the highest order, and thus cannot satisfy strict scrutiny, when it leaves appreciable damage to that supposedly vital interest unprohibited. Espinoza v. Montana Department of Revenue, 140 S. Ct. 2246 (2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983); Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Hayden v. Paterson, 594 F.3d 150 (2d Cir. 2010); Greenville Women's Clinic v. Bryant, 222 F.3d 157 (4th Cir. 2000); African American Legal Defense Fund, Inc. v. New York State Dept. of Educ., 8 F. Supp. 2d 330, 128 Ed. Law Rep. 204 (S.D. N.Y. 1998).
N.C.—Liebes v. Guilford County Dept. of Public Health, 213 N.C. App. 426, 713 S.E.2d 546 (2011).
Wis.—In re Jeremy P., 2005 WI App 13, 278 Wis. 2d 366, 692 N.W.2d 311 (Ct. App. 2004).

2 U.S.—Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Gallegos-Hernandez v. U.S., 688 F.3d 190 (5th Cir. 2012); Save Palisade FruitLands v. Todd, 279 F.3d 1204

(10th Cir. 2002); Mercado v. Kingsley Area Schools/Traverse City Public Schools Adult Educ. Consortium, 727 F. Supp. 335, 58 Ed. Law Rep. 115 (W.D. Mich. 1989); Hudson County Bldg. and Const. Trades Council, AFL-CIO v. City of Jersey City, 960 F. Supp. 823 (D.N.J. 1996); Cook for Cook v. Shalala, 835 F. Supp. 301 (W.D. Va. 1993).

Cal.—Tain v. State Bd. of Chiropractic Examiners, 130 Cal. App. 4th 609, 30 Cal. Rptr. 3d 330 (1st Dist. 2005).

Mo.—In re Care and Treatment of Norton, 123 S.W.3d 170 (Mo. 2003), as modified, (Jan. 27, 2004).

3 Cal.—Darces v. Woods, 35 Cal. 3d 871, 201 Cal. Rptr. 807, 679 P.2d 458 (1984).

4 Ala.—Board of Trustees of Policemen's and Firemen's Retirement Fund v. Cardwell, 400 So. 2d 402 (Ala. 1981).

5 U.S.—Sturgell v. Creasy, 640 F.2d 843 (6th Cir. 1981); Hudson County Bldg. and Const. Trades Council, AFL-CIO v. City of Jersey City, 960 F. Supp. 823 (D.N.J. 1996); Raycom Nat., Inc. v. Campbell, 361 F. Supp. 2d 679 (N.D. Ohio 2004); U.S. v. Conant, 116 F. Supp. 2d 1015 (E.D. Wis. 2000).

Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).

Mo.—United C.O.D. v. State, 150 S.W.3d 311 (Mo. 2004).

6 U.S.—Sturgell v. Creasy, 640 F.2d 843 (6th Cir. 1981).

Cal.—Fenn v. Sherriff, 109 Cal. App. 4th 1466, 1 Cal. Rptr. 3d 185 (3d Dist. 2003).

Ky.—D.F. v. Codell, 127 S.W.3d 571, 185 Ed. Law Rep. 1083 (Ky. 2003).

7 U.S.—Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983).

8 U.S.—Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983).

Cal.—City and County of San Francisco v. Freeman, 71 Cal. App. 4th 869, 84 Cal. Rptr. 2d 132 (1st Dist. 1999).

9 U.S.—Chatham v. Jackson, 613 F.2d 73 (5th Cir. 1980).

10 Fla.—Landrau v. State, 365 So. 2d 695 (Fla. 1978).

11 U.S.—Zablocki v. Redhail, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618, 24 Fed. R. Serv. 2d 1313 (1978); Application of Griffiths, 413 U.S. 717, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973); Hankins v. State of Hawaii, 639 F. Supp. 1552 (D. Haw. 1986); Moore v. School Reform Bd. of City of Detroit, 147 F. Supp. 2d 679, 155 Ed. Law Rep. 306 (E.D. Mich. 2000), judgment aff'd, 293 F.3d 352, 166 Ed. Law Rep. 432, 2002 FED App. 0204P (6th Cir. 2002); Savino v. County of Suffolk, 774 F. Supp. 756 (E.D. N.Y. 1991); Hinton v. Conner, 366 F. Supp. 2d 297, 24 A.L.R. Fed. 2d 669 (M.D. N.C. 2005); Defender Industries, Inc. v. Northwestern Mut. Life Ins. Co., 809 F. Supp. 400 (D.S.C. 1992), aff'd, 989 F.2d 492 (4th Cir. 1993) and (rejected on other grounds by, Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000)).

Fla.—Westerheide v. State, 831 So. 2d 93 (Fla. 2002).

12 U.S.—In re Alien Children Ed. Litigation, 501 F. Supp. 544 (S.D. Tex. 1980), opinion after summary affirmance by Court of Appeal, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

Colo.—Torres v. Portillos, 638 P.2d 274 (Colo. 1981).

13 U.S.—Georges v. Carney, 546 F. Supp. 469 (N.D. Ill. 1982), judgment aff'd, 691 F.2d 297 (7th Cir. 1982); Memphis Pub. Co. v. Leech, 539 F. Supp. 405 (W.D. Tenn. 1982).

Ariz.—Hunter Contracting Co., Inc. v. Superior Court In and For County of Maricopa, 190 Ariz. 318, 947 P.2d 892 (Ct. App. Div. 1 1997).

Cal.—Connerly v. State Personnel Bd., 92 Cal. App. 4th 16, 112 Cal. Rptr. 2d 5, 156 Ed. Law Rep. 1190 (3d Dist. 2001).

Narrowly tailoring

Under strict scrutiny analysis for determining whether a law violates equal protection principles, narrow tailoring requires serious, good faith consideration of workable nondiscriminatory alternatives that will achieve the legislature's goals.

Mass.—Finch v. Commonwealth Health Ins. Connector Authority, 461 Mass. 232, 959 N.E.2d 970 (2012).

14 U.S.—Application of Griffiths, 413 U.S. 717, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973); Kovach v. Middendorf, 424 F. Supp. 72 (D. Del. 1976).

Fla.—The Florida High School Activities Ass'n, Inc. v. Thomas By and Through Thomas, 434 So. 2d 306, 12 Ed. Law Rep. 1022 (Fla. 1983).

Tex.—Detar Hosp., Inc. v. Estrada, 694 S.W.2d 359 (Tex. App. Corpus Christi 1985).

15 Cal.—Pederson v. Superior Court, 105 Cal. App. 4th 931, 130 Cal. Rptr. 2d 289 (2d Dist. 2003).
Minn.—In re Linehan, 594 N.W.2d 867 (Minn. 1999).
N.J.—Sojourner A. ex rel. Y.A. v. New Jersey Dept. of Human Services, 350 N.J. Super. 152, 794 A.2d 822 (App. Div. 2002), judgment aff'd, 177 N.J. 318, 828 A.2d 306 (2003).

16 Cal.—Pederson v. Superior Court, 105 Cal. App. 4th 931, 130 Cal. Rptr. 2d 289 (2d Dist. 2003).
N.D.—Bismarck Public School Dist. No. 1 v. State By and Through North Dakota Legislative Assembly, 511 N.W.2d 247, 88 Ed. Law Rep. 1184 (N.D. 1994).
Okla.—Callaway v. City of Edmond, 1990 OK CR 25, 791 P.2d 104 (Okla. Crim. App. 1990).

17 U.S.—Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993).
N.J.—Sojourner A. ex rel. Y.A. v. New Jersey Dept. of Human Services, 350 N.J. Super. 152, 794 A.2d 822 (App. Div. 2002), judgment aff'd, 177 N.J. 318, 828 A.2d 306 (2003).
Utah—Dodge v. Evans, 716 P.2d 270 (Utah 1985).

18 U.S.—Texas v. Certain Named & Unnamed Undocumented Alien Children, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).
Ariz.—State v. Purcell, 199 Ariz. 319, 18 P.3d 113 (Ct. App. Div. 1 2001).
Del.—Doe v. Wilmington Housing Authority, 88 A.3d 654 (Del. 2014).
Fla.—Westerheide v. State, 831 So. 2d 93 (Fla. 2002).

19 U.S.—Rocky Mountain Christian Church v. Board of County Com'rs, 613 F.3d 1229 (10th Cir. 2010).

End of Document

16B C.J.S. Constitutional Law § 1276

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

§ 1276. Strict scrutiny test—Inherently suspect classifications

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970, 2972 to 2975, 2977 to 2979, 2981, 2982, 2985, 2991, 3032, 3035, 3036, 3039, 3041, 3043, 3050, 3057, 3060 to 3065, 3067, 3070 to 3072, 3073(1), 3074 to 3077, 3079, 3080, 3082, 3103, 3128, 3142, 3165, 3180, 3184, 3188, 3192, 3193, 3200, 3205, 3213, 3225, 3241, 3315, 3335 to 3437, 3475 to 3477, 3735, 3736, 3738 to 3740, 3742, 3765 to 3767, 3784, 3786, 4866

Classifications based on race and color, alienage, religion, and national origin are inherently suspect for the purpose of strict judicial scrutiny.

Classifications based on race and color,[1] alienage, religion, or national origin are inherently suspect and subject to strict judicial scrutiny[2] although a classification based on alienage is not necessarily suspect where the political process is involved.[3]

In determining whether members of a classification have been subjected to a history of discrimination and political powerlessness based on a characteristic that is relatively beyond their control for purposes of determining whether intermediate or strict scrutiny applies to a state constitutional equal protection challenge, the question is whether the characteristic is so integral to the individual's identity that, even if he or she could change it, whether it be inappropriate to require him or her to do so in order to avoid discrimination.[4]

Various persons, categories, or characterizations have been the subjects of adjudications to determine whether a suspect class is involved so as to require the application of the strict scrutiny test, such as citizenship or residency,[5] persons who are mentally retarded[6] or physically handicapped,[7] adopted persons,[8] women who place their children for adoption,[9] people who adopt those children,[10] and parents of unborn children.[11] Other classes or characteristics which have been the subject of such adjudications include new residents[12] or nonresidents[13] of a municipality or state, financial need,[14] indigency,[15] education,[16] and age.[17]

While there is some authority to the contrary,[18] a classification based on wealth or income is not considered suspect.[19] Illegitimacy is not a suspect classification under the Equal Protection Clause of the Fourteenth Amendment[20] though some courts have found that it is a suspect classification.[21] Illegitimacy may be a suspect class under a state equal protection provision.[22]

Homosexuality is not a suspect classification.[23]

Persons sexually affiliated with AIDS patients do not constitute a suspect class.[24]

CUMULATIVE SUPPLEMENT

Cases:

In designating a particular classification as "suspect" or "quasi-suspect" under the Equal Protection Clause, a variety of factors are considered that are grouped around the central idea of whether the discrimination embodies a gross unfairness that is so sufficiently inconsistent with the ideals of equal protection to term it "invidious"; among these are whether the class is defined by an immutable trait that frequently bears no relation to ability to perform or contribute to society and whether the class has been saddled with unique disabilities because of prejudice or inaccurate stereotypes, but experience, not abstract logic, must be the primary guide. U.S.C.A. Const.Amend. 14. Hassan v. City of New York, 804 F.3d 277 (3d Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 § 1235.

2 U.S.—Nyquist v. Mauclet, 432 U.S. 1, 97 S. Ct. 2120, 53 L. Ed. 2d 63 (1977); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Johnson v. Quander, 370 F. Supp. 2d 79 (D.D.C. 2005), aff'd, 440 F.3d 489 (D.C. Cir. 2006); Catholic Charities of Maine, Inc. v. City of Portland, 304 F. Supp. 2d 77 (D. Me. 2004).
S.C.—Fraternal Order of Police v. South Carolina Dept. of Revenue, 352 S.C. 420, 574 S.E.2d 717 (2002).
Tex.—Mauldin v. Texas State Bd. of Plumbing Examiners, 94 S.W.3d 867 (Tex. App. Austin 2002).

3 **Narrow construction**
Wash.—Nielsen v. Washington State Bar Ass'n, 90 Wash. 2d 818, 585 P.2d 1191 (1978).
Where alien is not legal permanent resident of United States
U.S.—LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005); Flores-Ledezma v. Gonzales, 415 F.3d 375 (5th Cir. 2005).
Aliens subject to Nicaraguan Adjustment and Central American Relief Act
Immigration and naturalization issues are subject to relaxed scrutiny.
U.S.—Chavez-Perez v. Ashcroft, 386 F.3d 1284 (9th Cir. 2004).
States' and Congress's respective powers

Although the states are restricted from discriminating on basis of alienage under Equal Protection Clause of Fourteenth Amendment, the United States Congress may rationally discriminate based on alienage.
U.S.—Basiente v. Glickman, 242 F.3d 1137 (9th Cir. 2001).

The level of judicial scrutiny which is applicable to gender-based classifications is discussed in § 1299.

State troopers

Court, in determining constitutionality of statute disqualifying aliens from becoming state troopers, was not required to apply "close scrutiny" test to alienage classification.
U.S.—Foley v. Connelie, 419 F. Supp. 889 (S.D. N.Y. 1976), judgment aff'd, 435 U.S. 291, 98 S. Ct. 1067, 55 L. Ed. 2d 287 (1978).

4 N.M.—Griego v. Oliver, 2014-NMSC-003, 316 P.3d 865 (N.M. 2013).

A.L.R. Library

What Constitutes Reverse or Majority Race or National Origin Discrimination Violative of Federal Constitution or Statutes—Public Employment Cases, 168 A.L.R. Fed. 1.
What Constitutes Reverse or Majority Race or National Origin Discrimination Violative of Federal Constitution or Statutes—Private Employment Cases, 150 A.L.R. Fed. 1.

5 **Issue of residency status for tuition purposes does not implicate suspect classification**

U.S.—Ward v. Temple University, 2003 WL 21281768 (E.D. Pa. 2003).

District of Columbia residents not a suspect class

U.S.—Banner v. U.S., 303 F. Supp. 2d 1 (D.D.C. 2004), judgment aff'd, 428 F.3d 303 (D.C. Cir. 2005).

6 U.S.—Philadelphia Police and Fire Ass'n for Handicapped Children, Inc. v. City of Philadelphia, 874 F.2d 156 (3d Cir. 1989); Heidemann v. Rother, 84 F.3d 1021, 16 A.D.D. 980 (8th Cir. 1996) (rejected on other grounds by, R.B. ex rel. L.B. v. Board of Educ. of City of New York, 99 F. Supp. 2d 411, 145 Ed. Law Rep. 975 (S.D. N.Y. 2000)); People First of Tennessee v. Arlington Developmental Center, 878 F. Supp. 97, 9 A.D.D. 804 (W.D. Tenn. 1992).

A.L.R. Library

Parents' Mental Illness or Mental Deficiency as Ground for Termination of Parental Rights—Constitutional Issues, 110 A.L.R.5th 579.

7 U.S.—Suffolk Parents of Handicapped Adults v. Wingate, 101 F.3d 818 (2d Cir. 1996); Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981); Kelley v. City of Mesa, 873 F. Supp. 320 (D. Ariz. 1994); Avalon Residential Care Homes, Inc. v. City of Dallas, 130 F. Supp. 2d 833 (N.D. Tex. 2000).
Pa.—Burns v. Public School Employees' Retirement Bd., 853 A.2d 1146, 190 Ed. Law Rep. 426 (Pa. Commw. Ct. 2004).

Blind persons

The blind do not constitute a "suspect classification" within the purview of the Equal Protection Clause.
U.S.—Spragens v. Shalala, 36 F.3d 947 (10th Cir. 1994); Gurmankin v. Costanzo, 411 F. Supp. 982 (E.D. Pa. 1976), order amended on other grounds, 14 Fair Empl. Prac. Cas. (BNA) 1357, 1977 WL 15497 (E.D. Pa. 1977) and order aff'd, 556 F.2d 184 (3d Cir. 1977).

8 U.S.—Cook for Cook v. Shalala, 835 F. Supp. 301 (W.D. Va. 1993).
Del.—Schlaeppi v. Delaware Trust Co., 525 A.2d 562 (Del. Ch. 1986), judgment aff'd, 523 A.2d 981 (Del. 1987).

Adopted alien children not suspect class

U.S.—Dumaguin v. Secretary of Health and Human Services, 28 F.3d 1218, 29 Fed. R. Serv. 3d 737 (D.C. Cir. 1994).

9 U.S.—Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996), aff'd, 106 F.3d 702, 1997 FED App. 0051P (6th Cir. 1997).

10 Neb.—Shoecraft v. Catholic Social Services Bureau, Inc., 222 Neb. 574, 385 N.W.2d 448 (1986) (holding modified on other grounds by, Friehe v. Schaad, 249 Neb. 825, 545 N.W.2d 740 (1996)).

11 Cal.—Reyna v. City and County of San Francisco, 69 Cal. App. 3d 876, 138 Cal. Rptr. 504 (1st Dist. 1977).

12 U.S.—Westenfelder v. Ferguson, 998 F. Supp. 146 (D.R.I. 1998); Eldridge v. Bouchard, 645 F. Supp. 749 (W.D. Va. 1986), judgment aff'd, 823 F.2d 546 (4th Cir. 1987).
Minn.—Mitchell v. Steffen, 487 N.W.2d 896 (Minn. Ct. App. 1992), aff'd, 504 N.W.2d 198 (Minn. 1993).

13 U.S.—Daly v. Harris, 117 Fed. Appx. 498 (9th Cir. 2004); Banner v. U.S., 303 F. Supp. 2d 1 (D.D.C. 2004), judgment aff'd, 428 F.3d 303 (D.C. Cir. 2005).
Idaho—In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).

Colo.—Thorpe v. State, 107 P.3d 1064 (Colo. App. 2004).

14 U.S.—Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484 (1977).

Pa.—Probst v. Com., Dept. of Transp., Bureau of Driver Licensing, 578 Pa. 42, 849 A.2d 1135 (2004).

15 Ill.—People v. Botruff, 212 Ill. 2d 166, 288 Ill. Dec. 105, 817 N.E.2d 463 (2004).

La.—Rhone v. Ward, 818 So. 2d 26 (La. Ct. App. 1st Cir. 2001), writ denied, 937 So. 2d 861 (La. 2006).

Wash.—In re Detention of Skinner, 122 Wash. App. 620, 94 P.3d 981 (Div. 1 2004).

A.L.R. Library

Laws regulating begging, panhandling, or similar activity by poor or homeless persons, 7 A.L.R.5th 455.

16 U.S.—Martin v. Shawano-Gresham School Dist., 295 F.3d 701, 167 Ed. Law Rep. 61 (7th Cir. 2002); Hubbard By and Through Hubbard v. Buffalo Independent School Dist., 20 F. Supp. 2d 1012, 130 Ed. Law Rep. 647 (W.D. Tex. 1998).

Wash.—Tunstall ex rel. Tunstall v. Bergeson, 141 Wash. 2d 201, 5 P.3d 691, 146 Ed. Law Rep. 528 (2000).

17 U.S.—Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Donahue v. City of Boston, 371 F.3d 7 (1st Cir. 2004); U.S. v. Juvenile Male, 211 F.3d 1169 (9th Cir. 2000); Gary v. City of Warner Robins, Ga., 311 F.3d 1334 (11th Cir. 2002); Leocata ex rel. Gilbride v. Wilson-Coker, 343 F. Supp. 2d 144 (D. Conn. 2004), aff'd, 148 Fed. Appx. 64 (2d Cir. 2005); Jones v. Wildgen, 320 F. Supp. 2d 1116 (D. Kan. 2004), on reconsideration in part on other grounds, 349 F. Supp. 2d 1358 (D. Kan. 2004); Levine v. McCabe, 357 F. Supp. 2d 608 (E.D. N.Y. 2005), judgment aff'd, 327 Fed. Appx. 315 (2d Cir. 2009).

Alaska—Treacy v. Municipality of Anchorage, 91 P.3d 252 (Alaska 2004).

Ohio—Schamer v. Western & Southern Life Ins. Co., 2004-Ohio-4249, 2004 WL 1800727 (Ohio Ct. App. 1st Dist. Hamilton County 2004).

18 U.S.—Worthy v. Michigan, 142 F. Supp. 2d 806 (E.D. Mich. 2000).

Wyo.—Washakie County School Dist. No. One v. Herschler, 606 P.2d 310 (Wyo. 1980).

19 U.S.—U.S. v. Myers, 294 F.3d 203 (1st Cir. 2002); Shaffer v. Board of School Directors of Albert Gallatin Area School Dist., 687 F.2d 718, 6 Ed. Law Rep. 487 (3d Cir. 1982); Southern Christian Leadership Conference v. Supreme Court of State of La., 252 F.3d 781, 154 Ed. Law Rep. 773 (5th Cir. 2001); Colaio v. Feinberg, 262 F. Supp. 2d 273 (S.D. N.Y. 2003), aff'd in part, appeal dismissed in part, 345 F.3d 135, 198 A.L.R. Fed. 721 (2d Cir. 2003).

Mo.—Wright v. Missouri Dept. of Social Services, Div. of Family Services, 25 S.W.3d 525 (Mo. Ct. App. W.D. 2000).

20 U.S.—Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977); Oglesby v. Williams, 484 F. Supp. 865 (M.D. Fla. 1980).

La.—Sudwischer v. Estate of Hoffpauir, 705 So. 2d 724 (La. 1997).

Ohio—McQueen v. Hawkins, 63 Ohio App. 3d 243, 578 N.E.2d 539 (6th Dist. Lucas County 1989).

As to the level of scrutiny that applies to illegitimacy classifications, see § 1278.

21 Md.—Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore, 137 Md. App. 60, 767 A.2d 906 (2001).

S.C.—In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002).

22 W. Va.—Taylor v. Hoffman, 209 W. Va. 172, 544 S.E.2d 387 (2001).

23 U.S.—Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996); Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004); Lofton v. Secretary of Dept. of Children and Family Services, 358 F.3d 804 (11th Cir. 2004); Padula v. Webster, 822 F.2d 97 (D.C. Cir. 1987); David v. Local 801, Danbury Fire Fighters Ass'n, 899 F. Supp. 78 (D. Conn. 1995); Glover v. Williamsburg Local School Dist. Bd. of Educ., 20 F. Supp. 2d 1160, 130 Ed. Law Rep. 661 (S.D. Ohio 1998); Watson v. Perry, 918 F. Supp. 1403 (W.D. Wash. 1996), aff'd, 124 F.3d 1126 (9th Cir. 1997).

Ohio—Cleveland v. Maistros, 145 Ohio App. 3d 346, 762 N.E.2d 1065 (8th Dist. Cuyahoga County 2001).

24 U.S.—David v. Local 801, Danbury Fire Fighters Ass'n, 899 F. Supp. 78 (D. Conn. 1995).

End of Document

16B C.J.S. Constitutional Law § 1277

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

§ 1277. Strict scrutiny test—Fundamental rights

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2970, 2972 to 2975, 2977 to 2979, 2981, 2982, 2985, 2991, 3032, 3035, 3036, 3039, 3041, 3043, 3050, 3057, 3060 to 3065, 3067, 3070 to 3072, 3073(1), 3074 to 3077, 3079, 3080, 3082, 3103, 3128, 3142, 3165, 3180, 3184, 3188, 3192, 3193, 3200, 3205, 3213, 3225, 3241, 3315, 3335 to 3437, 3475 to 3477, 3735, 3736, 3738 to 3740, 3742, 3765 to 3767, 3784, 3786, 4866

Strict scrutiny applies to an analysis of classifications impinging on such fundamental rights as marriage and procreation, voting, and the right to travel.

The fundamental rights which give rise to strict scrutiny analysis include the right to vote[1] and to travel,[2] the right to marriage,[3] privacy,[4] procreation,[5] certain aspects of criminal procedure or process,[6] First Amendment rights,[7] freedom of association,[8] and, according to some courts, education, under the particular state's constitution.[9] For the purpose of an equal protection challenge to a statute, fundamental rights are those rights that are deeply rooted in the Nation's history and traditions and implicit in the concept of ordered liberty.[10]

However, various particular rights and interests have been excluded from the concept of fundamental right for the purpose of judicial analysis, such as the general right to absolute liberty,[11] discharge in bankruptcy,[12] education,[13] and employment

and wages.[14] Furthermore, the mere fact that a legislative classification impacts upon the criminal trial or appellate process is insufficient to require a strict scrutiny analysis.[15]

Footnotes

1 U.S.—Green v. City of Tucson, 340 F.3d 891 (9th Cir. 2003); Woodhouse v. Maine Com'n on Governmental Ethics and Election Practices, 40 F. Supp. 3d 186 (D. Me. 2014).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Okla.—Gladstone v. Bartlesville Independent School Dist. No. 30 (I-30), 2003 OK 30, 66 P.3d 442 (Okla. 2003).

2 U.S.—U.S. v. Klinzing, 315 F.3d 803, 60 Fed. R. Evid. Serv. 748 (7th Cir. 2003); Pollack v. Duff, 958 F. Supp. 2d 280 (D.D.C. 2013).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Idaho—In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).

3 U.S.—Dittmer v. County of Suffolk, 188 F. Supp. 2d 286 (E.D. N.Y. 2002), judgment aff'd, 59 Fed. Appx. 375 (2d Cir. 2003).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Nev.—Gaines v. State, 116 Nev. 359, 998 P.2d 166 (2000).
Same-sex couples
(1) Alabama's marriage sanctity laws, prohibiting same-sex marriage, violate the Due Process Clause and Equal Protection Clause by restricting the fundamental marriage right, without serving a compelling state interest. Same-sex couples did not have a constitutionally protected right to marry, as the threshold step in the equal protection analysis, and thus, state laws restricting marriage to opposite sex couples did not violate equal protection.
Ala.—Strawser v. Strange, 44 F. Supp. 3d 1206 (S.D. Ala. 2015).
(2) Regardless of whether sexual orientation is an immutable characteristic, it is fundamental to a person's identity, which is sufficient to meet the immutability factor in determining, for equal protection purposes, whether a class is suspect or quasi-suspect.
U.S.—Wolf v. Walker, 986 F. Supp. 2d 982 (W.D. Wis. 2014).

4 Alaska—Treacy v. Municipality of Anchorage, 91 P.3d 252 (Alaska 2004).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Nev.—Williams v. State, 118 Nev. 536, 50 P.3d 1116 (2002).

5 U.S.—U.S. v. Williams, 124 F.3d 411 (3d Cir. 1997).
Ohio—State v. Williams, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).
Okla.—Gladstone v. Bartlesville Independent School Dist. No. 30 (I-30), 2003 OK 30, 66 P.3d 442 (Okla. 2003).

6 U.S.—Provident Mut. Life Ins. Co. of Philadelphia v. City of Atlanta, 864 F. Supp. 1274 (N.D. Ga. 1994).

7 U.S.—U.S. v. Williams, 124 F.3d 411 (3d Cir. 1997);
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

8 U.S.—Provident Mut. Life Ins. Co. of Philadelphia v. City of Atlanta, 864 F. Supp. 1274 (N.D. Ga. 1994).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

9 N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

10 Mo.—State v. Pike, 162 S.W.3d 464 (Mo. 2005).

11 D.C.—Matter of L. M., 432 A.2d 692 (D.C. 1981).

12 U.S.—U.S. v. Kras, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973).

13 U.S.—Colorado Seminary (University of Denver) v. National Collegiate Athletic Ass'n, 417 F. Supp. 885 (D. Colo. 1976), judgment aff'd, 570 F.2d 320 (10th Cir. 1978).
La.—Chabert v. Louisiana High School Athletic Ass'n, 323 So. 2d 774 (La. 1975).

14 U.S.—Sam v. U. S., 230 Ct. Cl. 596, 682 F.2d 925 (1982).

Pursuit of chosen profession

Cal.—Kubik v. Scripps College, 118 Cal. App. 3d 544, 173 Cal. Rptr. 539 (2d Dist. 1981).

15 U.S.—Tarter v. James, 667 F.2d 964 (11th Cir. 1982).

End of Document

16B C.J.S. Constitutional Law § 1278

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

§ 1278. Intermediate scrutiny test

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3032, 3039, 3050, 3060 to 3064, 3067, 3070 to 3072, 3073(1), 3074 to 3077, 3079, 3080, 3082

Quasi-suspect classifications are subject to an intermediate level of judicial scrutiny in the resolution of equal protection challenges.

Under an intermediate level of judicial scrutiny in the resolution of equal protection challenges, which is applicable to quasi-suspect classifications,[1] a heightened scrutiny is required but not a scrutiny as intense as that applied in cases involving suspect classifications or fundamental rights.[2] Under this analysis, the statutory classification must be substantially related to a governmental objective.[3]

If there is no substantial relationship between the challenged statutes and their purported objectives, such may well indicate that those objectives were not the statutes' goals in the first place.[4] The governmental objectives or interests must be important ones.[5] In the intermediate scrutiny analysis, although the government need not produce evidence to a scientific certainty of a substantial relationship, it carries the burden of proving such a relationship; the purpose of requiring proof of that close relationship is to assure that the validity of a classification is determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.[6]

Same-sex marriage.

Some courts have ruled that homosexuality is not a quasi-suspect classification.[7]

The United States Supreme Court, however, in striking down the Federal Defense of Marriage Act, stated that both the purpose and effect of the federal statute was to identify a subset of state-sanctioned marriages and make them unequal.[8] The Court held that no legitimate purpose overcomes the purpose and effect of the federal statute to disparage and to injure those whom the state, by its marriage laws, sought to protect in personhood and dignity.[9] However, the holding was specifically limited to the application of the federal law to the class of lawfully married couples as defined by state law.[10]

Persons sexually affiliated with AIDS patients do not constitute a quasi-suspect class.[11]

Illegitimacy.

Under equal protection analysis, an intermediate level of scrutiny is applied to laws burdening illegitimate children for the sake of punishing the illicit relations of their parents because visiting this condemnation on the head of an infant is illogical and unjust.[12] Some authorities have determined that the standard of review on equal protection challenge to statutes discriminating against people born out of wedlock requires that the classification bear a substantial relationship to important governmental objectives[13] and involves the balancing of the various state and individual interests affected.[14]

CUMULATIVE SUPPLEMENT

Cases:

To survive intermediate scrutiny, a party must show reasonable inferences based on substantial evidence that the statutes are substantially related to the governmental interest. New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242 (2d Cir. 2015).

Under middle-tier scrutiny in a constitutional challenge, the State must demonstrate that the law is reasonable and that the need for the law outweighs the value of the right to the individual. Driscoll v. Stapleton, 2020 MT 247, 473 P.3d 386 (Mont. 2020).

Middle-tier scrutiny in a constitutional challenge is used if a law or policy affects a right conferred by the State Constitution, but is not found in the Constitution's declaration of rights. Driscoll v. Stapleton, 2020 MT 247, 473 P.3d 386 (Mont. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Ball v. Massanari, 254 F.3d 817 (9th Cir. 2001); Save Palisade FruitLands v. Todd, 279 F.3d 1204 (10th Cir. 2002); Inturri v. City of Hartford, Conn., 365 F. Supp. 2d 240 (D. Conn. 2005), aff'd, 165 Fed. Appx. 66 (2d Cir. 2006).
Ariz.—Standhardt v. Superior Court ex rel. County of Maricopa, 206 Ariz. 276, 77 P.3d 451 (Ct. App. Div. 1 2003).
Mont.—Satterlee v. Lumberman's Mut. Cas. Co., 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (2009).

Tenn.—National Gas Distributors v. Sevier County Utility Dist., 7 S.W.3d 41 (Tenn. Ct. App. 1999).

2 Pa.—Long v. 130 Market St. Gift & Novelty of Johnstown, 294 Pa. Super. 383, 440 A.2d 517 (1982).

Class Limited Politically

To apply intermediate scrutiny in a state constitutional equal protection challenge, the class adversely affected by the legislation does not need to be completely politically powerless but must be limited in its political power or ability to advocate within the political system.

N.M.—Griego v. Oliver, 2014-NMSC-003, 316 P.3d 865 (N.M. 2013).

3 U.S.—Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988); Doe v. Wilmington Housing Authority, 88 A.3d 654 (Del. 2014).

Cal.—Ball v. Massanari, 254 F.3d 817 (9th Cir. 2001).

Nev.—Salaiscooper v. Eighth Judicial Dist. Court ex rel. County of Clark, 117 Nev. 892, 34 P.3d 509 (2001).

As to the applicability of the intermediate level of judicial analysis to gender-based classifications, see § 1299.

4 U.S.—Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979).

5 U.S.—Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988).

Cal.—Ball v. Massanari, 254 F.3d 817 (9th Cir. 2001).

Mo.—Glossip v. Missouri Dept. of Transp. and Highway Patrol Employees' Retirement System, 411 S.W.3d 796 (Mo. 2013).

6 U.S.—Pierre v. Holder, 738 F.3d 39 (2d Cir. 2013), petition for certiorari filed, 135 S. Ct. 58, 190 L. Ed. 2d 32 (2014).

7 U.S.—Holmes v. California Army Nat. Guard, 124 F.3d 1126 (9th Cir. 1997); Fletcher v. Little, 5 F. Supp. 3d 655 (D. Del. 2013).

Fla.—D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013).

8 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

9 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

10 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

11 U.S.—David v. Local 801, Danbury Fire Fighters Ass'n, 899 F. Supp. 78 (D. Conn. 1995).

12 U.S.—Astrue v. Capato ex rel. B.N.C., 132 S. Ct. 2021, 182 L. Ed. 2d 887 (2012).

Cal.—People v. Wilkinson, 33 Cal. 4th 821, 16 Cal. Rptr. 3d 420, 94 P.3d 551 (2004).

Ill.—People v. Botruff, 212 Ill. 2d 166, 288 Ill. Dec. 105, 817 N.E.2d 463 (2004).

Mich.—Phillips v. Mirac, Inc., 470 Mich. 415, 685 N.W.2d 174 (2004).

13 Mich.—Phillips v. Mirac, Inc., 470 Mich. 415, 685 N.W.2d 174 (2004).

Ohio—State v. Thompson, 95 Ohio St. 3d 264, 2002-Ohio-2124, 767 N.E.2d 251 (2002).

N.C.—Department of Transp. v. Rowe, 353 N.C. 671, 549 S.E.2d 203 (2001).

14 U.S.—Cox v. Schweiker, 684 F.2d 310 (5th Cir. 1982).

End of Document

16B C.J.S. Constitutional Law § 1279

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

§ 1279. Rational or reasonable basis test

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035, 3050 to 3057, 3060 to 3065, 3070, 3071, 3073(1), 3077, 3079, 3080, 3082

Where a classification does not involve suspect criteria or fundamental rights, it is examined under the relatively relaxed rational basis standard which requires only that the classification rationally or reasonably further a legitimate governmental purpose.

A classification which does not involve suspect criteria or fundamental rights is examined under the relatively relaxed rational basis standard which requires only that the classification reasonably further a legitimate governmental purpose, objective, or interest, or rationally be related to such a purpose, objective, or interest.[1] Such classification must be reasonable and not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced are treated alike.[2] To satisfy the Equal Protection Clause, the legitimate state purpose need not have been the main objective of the statute[3] or be readily ascertainable upon the face of the statute.[4] Despite its deference to legislative classifications, the rational basis test used in determining whether such classifications violate the Equal Protection Clause is not a toothless one.[5]

A classification is valid and will be upheld, under this test, if it is rationally related to a legitimate governmental interest or purpose.[6] Conversely, under the rational relation test or reasonable basis test, a challenged classification scheme may be invalidated only if it is arbitrary or bears no rational relationship to a legitimate state purpose,[7] or if the classification rests on grounds wholly irrelevant to the achievement of the state's objective,[8] and if no set of facts can reasonably be conceived to justify it.[9] Thus, the plaintiff, or the party challenging a statute or regulation, must negate any reasonably conceivable justification for the classification in order to prove that the classification is wholly irrational.[10] However, if no reasonably conceivable set of facts could establish a rational relationship between the act and a legitimate end of government, an act involving economic or social matters will be struck down.[11]

A statutory classification should not be overturned on equal protection grounds unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the legislature's actions are irrational.[12] On the other hand, if the classification is neither capricious nor arbitrary and rests on some reasonable consideration, difference, or policy, there is no denial of equal protection.[13]

A statutory classification is not invalid under the rational basis test because it is not the best possible method[14] or the least burdensome,[15] to achieve the state's objective, or because there are other means to accomplish the legitimate state objectives.[16] Moreover, when the basic classification is rationally based, uneven effects upon a particular group within a class are ordinarily of no constitutional concern.[17] Even if the classification is fairly debatable, it must be sustained under the rational basis test if it is not palpably arbitrary.[18]

The rationality commanded by the Equal Protection Clause does not require states to match the distinctions and the legitimate interests they serve with razor-like precision.[19]

A regulation challenged under the Equal Protection Clause is not devoid of a rational predicate simply because it happens to be incomplete.[20]

Administrative convenience is generally acceptable as a rational basis for classification, at least when the interest affected by the classification is neither fundamental or suspect.[21] On the other hand, mere considerations of administrative expediency are not alone a sufficient rational basis for imposition of disparate treatment violative of the equal protection guaranty,[22] and administrative convenience and expense cannot serve as the basis to support a discriminatory statutory scheme.[23] The Equal Protection Clause thus prohibits arbitrary and irrational discrimination even if no suspect class or fundamental right is implicated.[24]

Political considerations do not constitute a legitimate state purpose as a basis for proper classification.[25] Moreover, a bare congressional desire to harm a politically unpopular group does not constitute a legitimate governmental interest sufficient to sustain a legislative classification against an equal protection challenge.[26] On the other hand, a state may constitutionally rely on political concerns in scheduling special elections.[27]

The Equal Protection Clause is not violated merely because a classification is imperfect[28] or is not ideal.[29] A classification will not be set aside if any set of facts rationally justifying it is demonstrated to, or perceived by, the courts,[30] and the rational basis for government decision, as required by equal protection, may be based on rational speculation unsupported by evidence or empirical data.[31] Costs are especially relevant when the state's actions are subject only to rational basis review on an equal protection claim, given that conserving scarce resources may be a rational basis for state action.[32] Moreover, a classification

having some reasonable basis does not offend the Equal Protection Clause because it is not made with mathematical nicety or scientific exactness[33] or because in practice it actually results in some inequality.[34]

Neither homeless persons,[35] or children created through in vitro fertilization (IVF), represent a suspect class, and thus, the rational basis test applies in deciding equal protection challenges.[36]

The rational basis standard applies to equal protection claims raised by disabled persons.[37]

Where neither a suspect classification or a fundamental right is involved in an equal protection challenge to a statute, the court must uphold the constitutionality of the statute so long as it passes one of the rational relationship tests.[38]

Whether the identified legitimate state interests were actually considered in establishing the challenged prohibition is irrelevant under rational basis scrutiny of an equal protection challenge.[39]

Age.

Unlike race- or gender-based classifications, which require a tighter fit between the discriminatory means and the legitimate ends they serve, the government may discriminate on the basis of age without offending the constitutional guarantee of equal protection if the age classification in question is rationally related to a legitimate state interest.[40]

Sexual Orientation.

The rational basis review under the Equal Protection Clause has been applied to sexual-orientation classifications.[41]

CUMULATIVE SUPPLEMENT

Cases:

Fifth Amendment equal protection is not denied when there is a reasonable basis for a difference in treatment. U.S.C.A. Const.Amend. 5. U.S. v. Akbar, 74 M.J. 364 (C.A.A.F. 2015).

The rule of exclusion test, used in asserting a claim of discrimination under the Equal Protection Clause in the composition of grand juries, is hardly applicable where individuals are not promoted at random from the general population, but are considered for promotion on the basis of their individual qualifications. U.S.C.A. Const.Amend. 14. Burgis v. New York City Dept. of Sanitation, 798 F.3d 63 (2d Cir. 2015).

Any hypothetical rationale for legislative classification, even post hoc, cannot be a fantasy or be betrayed by the undisputed facts in order to provide basis for upholding the classification, on rational basis review, as not violative of the Equal Protection Clause. U.S. Const. Amend. 14. Big Tyme Investments, L.L.C. v. Edwards, 985 F.3d 456 (5th Cir. 2021).

For purposes of the rational-basis test, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Equal Protection Clause. U.S. Const. Amend. 14. Frederickson v. Landeros, 943 F.3d 1054 (7th Cir. 2019).

Under an Equal Protection rational basis review, the government does not need to articulate its reasoning when it enacts regulations. U.S. Const. Amend. 14. Tovar v. Zuchowski, 947 F.3d 606 (9th Cir. 2020).

Idaho statute criminalizing obtaining employment with an agricultural production facility by misrepresentation with the intent to cause economic or other injury to the facility's operations, property, or personnel, and requiring restitution for economic loss, did not violate Equal Protection Clause; Idaho had legitimate government purpose in restricting such employment-seeking misrepresentations, and thus the statute had legitimate governmental purpose beyond an irrational prejudice against journalists and animal rights activists. U.S. Const. Amend. 14; Idaho Code Ann. § 18-7042(1)(c). Animal Legal Defense Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018).

Under rational-basis review, where a group possesses distinguishing characteristics relevant to interests the state has the authority to implement, a state's decision to act on the basis of those differences does not give rise to an equal protection violation. U.S.C.A. Const.Amends. 5, 14. Rancho de Calistoga v. City of Calistoga, 800 F.3d 1083 (9th Cir. 2015).

A classification subject to rational basis review under equal protection clause is not arbitrary or irrational simply because there is an imperfect fit between means and ends, or because it may be to some extent both underinclusive and overinclusive. U.S. Const. Amend. 14; Cal. Const. art. 1, § 7. People v. Peacock, 2015 WL 7778250 (Cal. App. 4th Dist. 2015), review filed, (Dec. 3, 2015).

All that is required is that there is a plausible policy reason for the classification allegedly violating equal protection clause and that the legislative facts on which the classification is apparently based rationally may have been considered to be true by the government decisionmaker. U.S.C.A. Const.Amend. 14. Hoesli v. Triplett, Inc., 361 P.3d 504 (Kan. 2015).

While strict and intermediate scrutiny apply in an equal protection case when a statute makes a classification on the basis of a suspect or quasi-suspect class, the rational basis test is used when the statute merely affects social or economic policy. U.S. Const. Amend. 14. Teco/Perry County Coal v. Feltner, 582 S.W.3d 42 (Ky. 2019).

In an equal protection case under state constitution regarding a law subject to rational basis review, after court identifies the appropriate group of similarly situated persons, court determines the two critical nodes of equal protection analysis: the precise nature of the challenged distinction between members of the group and the legislative purpose for that distinction; finally, court applies the rational basis test, asking if the distinction is a rational way to achieve the legislative purpose. Minn. Const. art. 1, § 2. Fletcher Properties, Inc. v. City of Minneapolis, 947 N.W.2d 1 (Minn. 2020).

In equal protection claims subject to rational basis review, where the record does not contain information regarding the adoption of an ordinance, statute, or other governmental action, courts analyze the underlying legislative facts the governmental entity is alleged to have considered when such basis is clearly apparent. U.S. Const. Amend. 14; Neb. Const. art. 1, § 3. REO Enterprises, LLC v. Village of Dorchester, 306 Neb. 683, 947 N.W.2d 480 (2020).

Under rational basis review, court assessing an equal protection challenge to a statute must first determine whether the challenged statute seeks to promote any legitimate state interest or public value; if so, court must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or interests. U.S. Const. Amend. 14; Pa. Const. art. 1, §§ 1, 26. Lohr v. Saratoga Partners, L.P., 238 A.3d 1198 (Pa. 2020).

A statute subject to rational basis review is not constitutionally invalid because it is over- or underinclusive in achieving the legislature's purpose, unless no conceivable facts and justifications save the law from being wholly irrational. Brown v. Washington State Dept. of Commerce, 359 P.3d 771 (Wash. 2015).

Under rational basis equal protection analysis, though classifications may be imperfect and might create inequities, the court seeks to determine whether a classification rationally advances a legislative objective; to do so, the court must identify or, if necessary, construct a rationale supporting the legislature's determination. U.S.C.A. Const.Amend. 14; W.S.A. Const. Art. 1, § 1. Blake v. Jossart, 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Armour v. City of Indianapolis, Ind., 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012); Exxon Corp. v. Eagerton, 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983); Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); U.S. v. Lawson, 677 F.3d 629 (4th Cir. 2012); Van Staden v. St. Martin, 664 F.3d 56 (5th Cir. 2011).
N.D.—In re L.T., 2011 ND 120, 798 N.W.2d 657 (N.D. 2011).
Ohio—Studer v. Veterans of Foreign Wars Post 3767, 185 Ohio App. 3d 691, 2009-Ohio-7002, 925 N.E.2d 629 (11th Dist. Trumbull County 2009).
R.I.—Nichols v. R & D Const. Co., Inc., 60 A.3d 932 (R.I. 2013).
Wash.—State v. Hirschfelder, 170 Wash. 2d 536, 242 P.3d 876 (2010).
Economic and social legislation
"Rational basis" test involving limited review of legislature's decision is particularly appropriate in consideration of economic and social legislation.
U.S.—Spurlock v. Fox, 716 F.3d 383, 293 Ed. Law Rep. 695 (6th Cir. 2013), cert. denied, 134 S. Ct. 436, 187 L. Ed. 2d 283 (2013).
Kan.—State ex rel. D.S.M. v. Mealey, 33 Kan. App. 2d 947, 112 P.3d 956 (2005).
W. Va.—MacDonald v. City Hosp., Inc., 227 W. Va. 707, 715 S.E.2d 405 (2011).
Underlying philosophy
Under equal protection analysis, where ordinary commercial transactions are at issue, rational basis review requires deference to reasonable underlying legislative judgments.
U.S.—Armour v. City of Indianapolis, Ind., 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).
Ga.—Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 255 Ga. App. 764, 566 S.E.2d 470 (2002).

2 U.S.—Greenville Women's Clinic v. Commissioner, South Carolina Dept. of Health and Environmental Control, 317 F.3d 357 (4th Cir. 2002); Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995); Abboud v. I.N.S., 140 F.3d 843 (9th Cir. 1998); U.S. v. Barre, 324 F. Supp. 2d 1173 (D. Colo. 2004).
Cal.—People v. Rhodes, 126 Cal. App. 4th 1374, 24 Cal. Rptr. 3d 834 (1st Dist. 2005).
Mont.—Powder River County v. State, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).

3 U.S.—McGinnis v. Royster, 410 U.S. 263, 93 S. Ct. 1055, 35 L. Ed. 2d 282 (1973); Malmed v. Thornburgh, 621 F.2d 565 (3d Cir. 1980); Dickerson v. Johnson, 432 F. Supp. 612 (N.D. Ill. 1977).

4 N.D.—State v. Knoefler, 279 N.W.2d 658 (N.D. 1979).
Hypothetical interests
U.S.—Brown v. Alexander, 516 F. Supp. 607 (M.D. Tenn. 1981), judgment aff'd, 718 F.2d 1417 (6th Cir. 1983).

5 U.S.—Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston, Tex., 660 F.3d 235 (5th Cir. 2011); Deen v. Egleston, 597 F.3d 1223 (11th Cir. 2010).

6 U.S.—Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983); Zobel v. Williams, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982); Donahue v. City of Boston, 371 F.3d 7 (1st Cir. 2004); Fields v. Legacy Health System, 413 F.3d 943 (9th Cir. 2005); Doe v. Moore, 410 F.3d 1337 (11th Cir. 2005); Inturri v. City of Hartford, Conn., 365 F. Supp. 2d 240 (D. Conn. 2005), aff'd, 165 Fed. Appx. 66 (2d Cir. 2006); MBC Realty, LLC v. Mayor and City Council of Baltimore, 351 F. Supp. 2d 420 (D. Md. 2005); Gillum v. Nassau Downs Regional Off Track Betting Corp. of Nassau, 357 F. Supp. 2d 564 (E.D. N.Y. 2005).
Fla.—Warren v. State Farm Mut. Auto. Ins. Co., 899 So. 2d 1090 (Fla. 2005).
Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).
Presumption of validity

On rational basis review of a claim under the Equal Protection and Due Process Clauses, the general rule is that legislation is presumed to be valid and will be sustained if the classification drawn is rationally related to a legitimate state interest.

U.S.—Gonzalez-Droz v. Gonzalez-Colon, 660 F.3d 1 (1st Cir. 2011).

Nonsuspect classifications are accorded a strong presumption of validity when challenged on equal protection grounds and must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the distinction.

U.S.—Colon Health Centers of America, LLC v. Hazel, 733 F.3d 535 (4th Cir. 2013); Bailey v. Callaghan, 715 F.3d 956, 293 Ed. Law Rep. 675 (6th Cir. 2013).

7 U.S.—Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979); Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973); Liberty Coins, LLC v. Goodman, 748 F.3d 682 (6th Cir. 2014).

Cal.—California Assn. of Retail Tobacconists v. State of California, 109 Cal. App. 4th 792, 135 Cal. Rptr. 2d 224 (4th Dist. 2003).

Md.—Rios v. Montgomery County, 386 Md. 104, 872 A.2d 1 (2005).

Ohio—Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray, 127 Ohio St. 3d 104, 2010-Ohio-4908, 936 N.E.2d 944 (2010).

8 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980); U.S. v. Williams, 299 F.3d 250 (3d Cir. 2002); Britell v. U.S., 372 F.3d 1370 (Fed. Cir. 2004); Olvera v. Reno, 20 F. Supp. 2d 1062 (S.D. Tex. 1998).

Kan.—State ex rel. D.S.M. v. Mealey, 33 Kan. App. 2d 947, 112 P.3d 956 (2005).

N.J.—McCann v. Clerk, City of Jersey City, 338 N.J. Super. 509, 770 A.2d 723 (App. Div. 2001), judgment aff'd, 168 N.J. 285, 773 A.2d 1151 (2001), opinion supplemented, 167 N.J. 311, 771 A.2d 1123 (2001).

Wash.—State v. Harner, 153 Wash. 2d 228, 103 P.3d 738 (2004), as amended on denial of reconsideration, (Feb. 17, 2005).

9 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Bryant v. New York State Educ. Dept., 692 F.3d 202, 284 Ed. Law Rep. 1 (2d Cir. 2012), cert. denied, 133 S. Ct. 2022, 185 L. Ed. 2d 885 (2013).

Ill.—People v. Downin, 357 Ill. App. 3d 193, 293 Ill. Dec. 371, 828 N.E.2d 341 (3d Dist. 2005).

Me.—Doe I v. Williams, 2013 ME 24, 61 A.3d 718 (Me. 2013).

10 U.S.—Brian B. ex rel. Lois B. v. Com. of Pennsylvania Dept. of Educ., 230 F.3d 582, 148 Ed. Law Rep. 98 (3d Cir. 2000); Gusewelle v. City of Wood River, 374 F.3d 569 (7th Cir. 2004).

11 Colo.—Colorado Soc. of Community and Institutional Psychologists, Inc. v. Lamm, 741 P.2d 707 (Colo. 1987).

12 U.S.—Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000); Barry v. Barchi, 443 U.S. 55, 99 S. Ct. 2642, 61 L. Ed. 2d 365 (1979); Gibson v. Texas Dept. of Ins.—Div. of Workers' Compensation, 700 F.3d 227 (5th Cir. 2012); 219 South Atlantic Blvd. Inc. v. City of Ft. Lauderdale, Fla., 239 F. Supp. 2d 1265 (S.D. Fla. 2002); Allen v. Leis, 154 F. Supp. 2d 1240 (S.D. Ohio 2001).

Md.—Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore, 137 Md. App. 60, 767 A.2d 906 (2001).

Tex.—Tex-Air Helicopters, Inc. v. Appraisal Review Bd. of Galveston County, 940 S.W.2d 299 (Tex. App. Houston 14th Dist. 1997), writ granted, (Sept. 4, 1997) and judgment aff'd, 970 S.W.2d 530 (Tex. 1998).

13 U.S.—Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989); KT.& G Corp v. Attorney General of State of Okla., 535 F.3d 1114 (10th Cir. 2008).

Ky.—Children's Psychiatric Hosp. of Northern Kentucky, Inc. v. Revenue Cabinet, Com. of Ky., 989 S.W.2d 583 (Ky. 1999).

N.Y.—Gray v. Huonker, 305 A.D.2d 1081, 758 N.Y.S.2d 731 (4th Dep't 2003).

14 Del.—S.S. v. State, 514 A.2d 1142 (Del. Super. Ct. 1986).

15 Minn.—Metropolitan Sports Facilities Com'n v. County of Hennepin, 478 N.W.2d 487 (Minn. 1991).

16 U.S.—Schweiker v. Wilson, 450 U.S. 221, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981).

17 U.S.—Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); National Ass'n of Government Employees, Inc. v. Barrett, 968 F. Supp. 1564 (N.D. Ga. 1997), aff'd, 155 F.3d 1276 (11th Cir. 1998); Means v. Shyam Corp., 44 F. Supp. 2d 129 (D.N.H. 1999).
Conn.—Eielson v. Parker, 179 Conn. 552, 427 A.2d 814 (1980).

18 U.S.—Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981).
Mich.—Johnson v. Harnischfeger Corp., 414 Mich. 102, 323 N.W.2d 912 (1982).

19 U.S.—Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000) (age discrimination).

20 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982).

21 N.J.—Barone v. Department of Human Services, Div. of Medical Assistance and Health Services, Bureau of Pharmaceutical Assistance to the Aged and Disabled, 210 N.J. Super. 276, 509 A.2d 786 (App. Div. 1986), judgment aff'd, 107 N.J. 355, 526 A.2d 1055 (1987).

22 Colo.—Tassian v. People, 731 P.2d 672 (Colo. 1987).

23 U.S.—Nadeau v. Helgemoe, 561 F.2d 411 (1st Cir. 1977); Montgomery v. Douglas, 388 F. Supp. 1139 (D. Colo. 1974), judgment aff'd, 422 U.S. 1030, 95 S. Ct. 2645, 45 L. Ed. 2d 687 (1975).

Barrier to enjoyment of benefits to one subclass as impermissible

U.S.—Gentry v. U. S., 212 Ct. Cl. 1, 546 F.2d 343 (1976).

24 U.S.—Muller v. Costello, 187 F.3d 298 (2d Cir. 1999).

25 U.S.—Carbonaro v. Reeher, 392 F. Supp. 753 (E.D. Pa. 1975).

26 U.S.—Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).

27 U.S.—Greenwood v. Singel, 823 F. Supp. 1207 (E.D. Pa. 1993).

28 U.S.—Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Dimond v. District of Columbia, 792 F.2d 179 (D.C. Cir. 1986); Mihalich v. Com. of Pa., 608 F. Supp. 525 (M.D. Pa. 1985).
Colo.—Buckley Powder Co. v. State, 70 P.3d 547 (Colo. App. 2002).
Md.—Piscatelli v. Board of Liquor License Com'rs, 378 Md. 623, 837 A.2d 931 (2003).

29 U.S.—U.S. v. Alexander, 673 F.2d 287 (9th Cir. 1982).

Legislature mistaken

Where there is evidence before a legislature reasonably supporting a classification attacked as without a rational basis, litigants may not procure invalidation under Equal Protection Clause merely by tendering evidence in court that legislature was mistaken.

U.S.—Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

30 U.S.—Borden's Farm Products Co. v. Baldwin, 293 U.S. 194, 55 S. Ct. 187, 79 L. Ed. 281 (1934); Piepenburg v. Cutler, 649 F.2d 783 (10th Cir. 1981); Prudential Property and Cas. Co. v. Insurance Commission of South Carolina Dept. of Ins., 534 F. Supp. 571 (D.S.C. 1982), judgment aff'd, 699 F.2d 690 (4th Cir. 1983).
D.C.—Gibson v. U.S., 602 A.2d 117 (D.C. 1992).
Okla.—Lafalier v. Lead-Impacted Communities Relocation Assistance Trust, 2010 OK 48, 237 P.3d 181 (Okla. 2010).

31 U.S.—EJS Properties, LLC v. City of Toledo, 698 F.3d 845 (6th Cir. 2012), cert. denied, 133 S. Ct. 1635, 185 L. Ed. 2d 617 (2013); Loesel v. City of Frankenmuth, 692 F.3d 452 (6th Cir. 2012), cert. denied, 133 S. Ct. 878, 184 L. Ed. 2d 660 (2013) and cert. denied, 133 S. Ct. 904, 184 L. Ed. 2d 660 (2013).

32 U.S.—Guttman v. Khalsa, 669 F.3d 1101 (10th Cir. 2012).

33 U.S.—U. S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973); Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970); Lavia v. Pennsylvania, Dept. of Corrections, 224 F.3d 190 (3d Cir. 2000); Bowman v. Barnhart, 218 F. Supp. 2d 960 (N.D. Ill. 2002).
Ill.—People v. McCormick, 332 Ill. App. 3d 491, 266 Ill. Dec. 286, 774 N.E.2d 392 (4th Dist. 2002).
Md.—Piscatelli v. Board of Liquor License Com'rs, 378 Md. 623, 837 A.2d 931 (2003).

Relation to purposes

A statutory classification which does not impinge on a fundamental interest need not be drawn so as to fit with precision the legitimate purposes animating it.

U.S.—Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).

34 U.S.—Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970); Olympic Arms, et al. v. Buckles, 301 F.3d 384, 2002 FED App. 0264P (6th Cir. 2002); Minnesota Senior Federation, Metropolitan Region v. U.S., 273 F.3d 805 (8th Cir. 2001); Aleman v. Glickman, 217 F.3d 1191 (9th Cir. 2000); Hedgepeth v. Washington Metropolitan Area Transit, 284 F. Supp. 2d 145 (D.D.C. 2003), order aff'd, 386 F.3d 1148 (D.C. Cir. 2004); Bowman v. Barnhart, 218 F. Supp. 2d 960 (N.D. Ill. 2002); Margiotta v. Kaye, 283 F. Supp. 2d 857 (E.D. N.Y. 2003); In re Kandu, 315 B.R. 123 (Bankr. W.D. Wash. 2004).
Colo.—People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).
Ga.—Sears v. Dickerson, 278 Ga. 900, 607 S.E.2d 562 (2005).

35 U.S.—Joel v. City of Orlando, 232 F.3d 1353 (11th Cir. 2000); Davison v. City of Tucson, 924 F. Supp. 989 (D. Ariz. 1996).

36 U.S.—Finley v. Astrue, 601 F. Supp. 2d 1092 (E.D. Ark. 2009).

37 U.S.—Stevens v. Illinois Dept. of Transp., 210 F.3d 732 (7th Cir. 2000); Lee v. City of Los Angeles, 250 F.3d 668, 56 Fed. R. Evid. Serv. 698 (9th Cir. 2001); Copelin-Brown v. New Mexico State Personnel Office, 399 F.3d 1248 (10th Cir. 2005); Jamison v. Delaware, 340 F. Supp. 2d 514 (D. Del. 2004); Medical Society of New Jersey v. Herr, 191 F. Supp. 2d 574 (D.N.J. 2002).

38 U.S.—Center for Reproductive Law and Policy v. Bush, 304 F.3d 183 (2d Cir. 2002); Latu v. Ashcroft, 375 F.3d 1012 (10th Cir. 2004); In re Bannish, 311 B.R. 547 (C.D. Cal. 2004); Snowden v. Town of Bay Harbor Islands, Florida, 358 F. Supp. 2d 1178 (S.D. Fla. 2004).
Ga.—Roberts v. Burgess, 279 Ga. 486, 614 S.E.2d 25 (2005).
Ky.—Elk Horn Coal Corp. v. Cheyenne Resources, Inc., 163 S.W.3d 408 (Ky. 2005).

39 U.S.—Breck v. State of Mich., 203 F.3d 392, 2000 FED App. 0049P (6th Cir. 2000).

40 U.S.—Donahue v. City of Boston, 371 F.3d 7 (1st Cir. 2004); National Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives, 700 F.3d 185 (5th Cir. 2012), cert. denied, 134 S. Ct. 1364, 188 L. Ed. 2d 296 (2014); Hedgepeth v. Washington Metropolitan Area Transit, 284 F. Supp. 2d 145 (D.D.C. 2003), order aff'd, 386 F.3d 1148 (D.C. Cir. 2004).
Ill.—Arvia v. Madigan, 209 Ill. 2d 520, 283 Ill. Dec. 895, 809 N.E.2d 88, 34 A.L.R.6th 803 (2004).
Ga.—Harper v. State, 292 Ga. 557, 738 S.E.2d 584 (2013).
Wash.—Campbell v. State, Department of Social and Health Services, 150 Wash. 2d 881, 83 P.3d 999 (2004).

41 U.S.—DeBoer v. Snyder, 772 F.3d 388 (6th Cir. 2014); Price-Cornelison v. Brooks, 524 F.3d 1103 (10th Cir. 2008).

End of Document

16B C.J.S. Constitutional Law VI XVII Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Equal Protection
A.L.R. Index, Racial Discrimination
A.L.R. Index, Sex Discrimination
A.L.R. Index, Zoning
West's A.L.R. Digest, Constitutional Law 3020, 3027, 3045, 3078, 3081, 3106, 3114, 3227, 3250 to 3310, 3340, 3380 to 3429, 3780, 3781, 3788, 3790, 3791, 3794, 3795, 3796, 3797, 3798, 3800, 3803, 3805, 3830, 3831, 3833

End of Document

16B C.J.S. Constitutional Law VI XVII A Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

A. Discrimination by Reason of Race, Color, Ethnicity, or Creed

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Equal Protection
A.L.R. Index, Racial Discrimination
West's A.L.R. Digest, Constitutional Law 3020, 3027, 3078, 3114, 3250 to 3252, 3256, 3258 to 3260(1), 3261, 3263, 3264, 3266, 3267, 3272, 3276, 3277, 3278(1) to 3278(8), 3279 to 3281, 3284, 3285, 3297 to 3304, 3306 to 3310, 3830, 3831, 3833

End of Document

16B C.J.S. Constitutional Law § 1280

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

A. Discrimination by Reason of Race, Color, Ethnicity, or Creed

1. In General

§ 1280. Prohibition against discrimination in violation of equal protection guarantee

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3250, 3251

Discrimination by a state or municipality against a person because of his or her race, color, ethnicity, or creed generally constitutes a denial of the equal protection of the laws, and it is incumbent on the courts to inquire not merely whether it has been denied in express terms but also whether it has been denied in substance and effect.

The central purpose of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution is to prevent state action which discriminates on the basis of race or color.[1] The moral imperative of racial neutrality is the driving force of the Equal Protection Clause, and racial classifications are permitted only as a last resort.[2] Thus, discrimination by a state or municipality against any person within its jurisdiction because of his or her race, ethnicity, national origin,[3] or color[4] generally constitutes a denial of the equal protection of the laws. Similarly, governmental discrimination based on creed, or formula or confession of religious faith or belief, constitutes a denial of equal protection of the laws.[5]

Laws which brand persons inferior because of their race or color, and thus act as a stimulant to prejudice, are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.[6] Whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the constitutional guarantee

of equal protection,[7] and the mere equal application of a statute containing racial classifications is not sufficient to remove the classifications from the proscription of all invidious racial discriminations.[8] Moreover, equal protection principles apply not only to legislation that contains explicit racial distinctions but also to laws neutral on their face but unexplainable on grounds other than race.[9] Even in the absence of any express racial or ethnic classification in the challenged law, enforcing a law against a minority group on the basis of racial or ethnic discrimination violates the Equal Protection Clause.[10] Thus, an equal protection violation can arise from a law or policy that expressly classifies persons on the basis of race or from a facially neutral law or policy that has a discriminatory effect on an identifiable group when applied in an intentionally discriminatory manner.[11]

A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon extraordinary justification, and this rule applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination.[12] When racial classifications in a law are explicit, no inquiry into the legislative purpose is necessary, for purposes of determining whether such law violates the Equal Protection Clause.[13]

Proof of racially discriminatory intent or purpose.

Proof of a racially discriminatory intent or purpose generally is required to show a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.[14] While a person claiming an equal protection violation is not required to prove that the challenged action rests solely on a racially discriminatory purpose,[15] such a purpose must have been a motivating factor in the decision.[16] Although disparate impact may be relevant evidence of discrimination, such evidence alone is insufficient to prove a constitutional violation even where the Fourteenth Amendment subjects state action to strict scrutiny.[17]

The context of a challenged action matters when reviewing a race-based governmental action under the Equal Protection Clause.[18] An invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another.[19] Furthermore, a plaintiff may state a claim for relief under the Equal Protection Clause, even if direct evidence of discrimination is not available, by pointing to a pattern of action that disproportionately burdens an ethnic group and which is unexplainable on grounds other than race.[20]

It is proper for a court to consider the matter of race in certain instances, and when determining the best interests of a child in the context of a custody dispute between parents, the court may consider the race of the parties as it relates to a child's ethnic heritage and which parent is more prepared to expose the child to it, and such an analysis does not constitute awarding custody on the basis of race in violation of constitutional guarantees of equal protection.[21] Likewise, states may adopt laws and policies to reflect or effectuate federal laws designed to readjust allocation of jurisdiction over Native Americans without opening themselves to a charge that they have engaged in race-based discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.[22] Similarly, the different treatment of Indians and non-Indians under the Indian Child Welfare Act is based on the political status of the parents and children and the quasi-sovereign nature of the tribe and thus is not a discriminatory classification prohibited by the Equal Protection Clause.[23]

CUMULATIVE SUPPLEMENT

Cases:

A primary objective of the Equal Protection Clause was the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. U.S. Const. Amend. 14. Flowers v. Mississippi, 139 S. Ct. 2228 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976); Bowlby v. City of Aberdeen, Miss., 681 F.3d 215 (5th Cir. 2012).
Neb.—State v. Bird Head, 204 Neb. 807, 285 N.W.2d 698 (1979).

2 U.S.—Bartlett v. Strickland, 556 U.S. 1, 129 S. Ct. 1231, 173 L. Ed. 2d 173, 51 A.L.R. Fed. 2d 709 (2009).
As to the propriety of affirmative action programs designed to remedy past discrimination, see § 1283.

3 U.S.—Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); Bulluck v. Washington, 468 F.2d 1096 (D.C. Cir. 1972).
Mass.—Com. v. King, 374 Mass. 5, 372 N.E.2d 196 (1977).
Dominant interest
The compelling governmental interest in interdiction of racial discrimination stands on the highest constitutional ground and is dominant over other constitutional interests to the extent that there is complete and unavoidable conflict.
U.S.—Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), judgment aff'd, 404 U.S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971).
A.L.R. Library
Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases, 172 A.L.R. Fed. 1.

4 U.S.—Torao Takahashi v. Fish and Game Commission, 334 U.S. 410, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948); Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948).

5 Or.—Kenji Namba v. McCourt, 185 Or. 579, 204 P.2d 569 (1949).

6 U.S.—Local Union No. 35 of Intern. Broth. of Elec. Workers v. City of Hartford, 625 F.2d 416 (2d Cir. 1980).

7 U.S.—Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

8 U.S.—Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).

9 U.S.—Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).

10 U.S.—U.S. v. Hare, 308 F. Supp. 2d 955 (D. Neb. 2004).

11 U.S.—U.S. v. Hare, 308 F. Supp. 2d 955 (D. Neb. 2004).

12 U.S.—Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979).

13 U.S.—Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

14 U.S.—City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003).
Wis.—Jackson v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602, 126 Ed. Law Rep. 399 (1998).
Use of circumstantial and direct evidence of intent
For purposes of determining whether a law is racially motivated, such as would violate the Equal Protection Clause, the task of assessing the motivation for the law is an inherently complex endeavor, requiring the trial court to perform a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.
U.S.—Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

15 U.S.—Hayden v. Paterson, 594 F.3d 150 (2d Cir. 2010); Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, 567 F.2d 1368 (8th Cir. 1977).

16 U.S.—Schmidt v. Boston Housing Authority, 505 F. Supp. 988 (D. Mass. 1981).
Criteria
The criteria for determining whether an invidious discriminatory purpose was a motivating factor for a government's act include the impact of the act, that is, whether it burdens one race more than another, the historical background of the challenged decision, the degree to which the action departs from either the normal procedural sequence or normal substantive criteria, and contemporaneous statements of those making decisions.

U.S.—Talbert v. City of Richmond, 648 F.2d 925 (4th Cir. 1981).

17 U.S.—Coleman v. Court of Appeals of Maryland, 132 S. Ct. 1327, 182 L. Ed. 2d 296 (2012).

Disproportionate effect as starting point

U.S.—Crawford v. Board of Educ. of City of Los Angeles, 458 U.S. 527, 102 S. Ct. 3211, 73 L. Ed. 2d 948, 5 Ed. Law Rep. 82 (1982).

18 U.S.—Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

19 U.S.—Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976); Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, 567 F.2d 1368 (8th Cir. 1977); Louisville Black Police Officers Organization, Inc. v. City of Louisville, 511 F. Supp. 825 (W.D. Ky. 1979), aff'd, 700 F.2d 268 (6th Cir. 1983); Beasley v. Potter, 493 F. Supp. 1059 (W.D. Mich. 1980).

Relevant considerations

Relevant considerations in assessing discriminatory intent include the historical background of the decision at issue, the specific sequence of events leading up to the challenged decision, departures from the normal procedural sequence, and the legislative or administrative history, including especially any contemporary statements by members of the decisionmaking body.

U.S.—Reno v. Bossier Parish School Bd., 520 U.S. 471, 117 S. Ct. 1491, 137 L. Ed. 2d 730 (1997).

20 U.S.—Comite Pro-Celebracion v. Claypool, 863 F. Supp. 682 (N.D. Ill. 1994).

21 S.D.—Jones v. Jones, 1996 SD 2, 542 N.W.2d 119 (S.D. 1996).

22 N.Y.—New York Ass'n of Convenience Stores v. Urbach, 92 N.Y.2d 204, 677 N.Y.S.2d 280, 699 N.E.2d 904 (1998).

23 N.D.—In re A.B., 2003 ND 98, 663 N.W.2d 625 (N.D. 2003).

End of Document

16B C.J.S. Constitutional Law § 1281

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

A. Discrimination by Reason of Race, Color, Ethnicity, or Creed

1. In General

§ 1281. Necessity of state action to constitute actionable denial of equal protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3020, 3027

Discrimination violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution only when it is attributable to state action; equal protection does not forbid discrimination on a private level unless state action is involved.

Discrimination violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution only when it is attributable to state action[1] and, in this connection, the exercise of state power in any form constitutes "state action."[2] It includes an action by any instrumentality of the state[3] or by state or municipal officials,[4] whether de facto or de jure,[5] and whether officially authorized or lawful.[6]

Private contracts and individual acts.

Equal protection is implicated only where there is state action, and private conduct normally does not raise an equal protection violation.[7] A private entity cannot violate a plaintiff's Fourteenth Amendment equal protection rights unless the state or

some other government entity is somehow responsible for the private entity's activities.[8] However, discrimination by private individuals may amount to "state action" and thus bring such individuals or private associations within the limits of the Equal Protection Clause[9] where the State has so far insinuated itself into a position of interdependence with the private enterprise that it has become a joint participant therein.[10]

Any distinction made on the basis of race in a publicly supported institution is a patent violation of the law.[11] For example, decisions by faculties and administrators of public schools based on race or ethnic origin are reviewable under the Fourteenth Amendment.[12] However, the Equal Protection Clauses of the Fifth and Fourteenth Amendments generally do not apply to private schools that do not receive federal funding.[13]

Involvement by state in private discrimination.

A state cannot engage in practices which encourage private racial discrimination.[14] In determining whether a state is involved in racial discrimination, the inquiry is properly directed to the type of state action involved, the extent to which the state thereby associates itself, or is in public view associated with, invidious discriminatory purposes and policies, and the extent to which the responsibility for perpetration of those invidious designs may be justifiably ascribed to the state itself.[15]

The State is responsible for racial discrimination by a private party when the State has compelled the discrimination, and it is immaterial whether such compulsion arises from state law or by custom which has the force of law.[16]

CUMULATIVE SUPPLEMENT

Cases:

The central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. U.S.C.A. Const.Amend. 14. Pena-Rodriguez v. Colorado, 137 S. Ct. 855 (2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Georgia v. McCollum, 505 U.S. 42, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992); Inada v. Sullivan, 523 F.2d 485 (7th Cir. 1975).
N.J.—Brunson v. Rutherford Lodge No. 547 of Benev. and Protective Order of Elks, 128 N.J. Super. 66, 319 A.2d 80 (Law Div. 1974).
As to state action, generally, see § 1263.

2 U.S.—Louisiana High School Athletic Ass'n v. St. Augustine High School, 396 F.2d 224, 12 Fed. R. Serv. 2d 592 (5th Cir. 1968); U.S. v. Cantrell, 307 F. Supp. 259 (E.D. La. 1969); Goodwin v. Wyman, 330 F. Supp. 1038 (S.D. N.Y. 1971), judgment aff'd, 406 U.S. 964, 92 S. Ct. 2420, 32 L. Ed. 2d 664 (1972).
State-sponsored racial inequality barred
U.S.—Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966); Com. of Pa. v. Brown, 270 F. Supp. 782 (E.D. Pa. 1967), judgment aff'd, 392 F.2d 120, 25 A.L.R.3d 724 (3d Cir. 1968).
Government programs
U.S.—Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 8 A.L.R. Fed. 388 (2d Cir. 1968).
Jury selection procedures

Whether a trial is criminal or civil, potential jurors, as well as litigants, have an equal protection right to jury selection procedures that are free from state-sponsored group stereotypes rooted in, and reflective of, historical prejudice.

U.S.—J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994).

3 U.S.—Player v. State of Ala. Dept. of Pensions and Sec., 400 F. Supp. 249 (M.D. Ala. 1975), aff'd, 536 F.2d 1385 (5th Cir. 1976); McDaniel v. Board of Public Instruction for Escambia County, Fla., 39 F. Supp. 638 (N.D. Fla. 1941).

Action by judiciary

U.S.—Barrows v. Jackson, 346 U.S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953).

Nev.—Beazley v. Davis, 92 Nev. 81, 545 P.2d 206 (1976).

As to the effect of the Equal Protection Clause on civil remedies and procedure, generally, see §§ 1371 to 1411.

4 U.S.—City of Richmond, Virginia v. U.S., 422 U.S. 358, 95 S. Ct. 2296, 45 L. Ed. 2d 245 (1975); Small v. Hudson, 322 F. Supp. 519 (M.D. Fla. 1970).

Color of law

Acts of officers performed under color of law, although not authorized by law, may nevertheless be within the protection afforded by the Equal Protection Clause.

U.S.—Valle v. Stengel, 176 F.2d 697 (3d Cir. 1949).

5 U.S.—Rice v. Elmore, 165 F.2d 387 (C.C.A. 4th Cir. 1947).

6 U.S.—Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

7 S.C.—In re Estate of Boynton, 355 S.C. 299, 584 S.E.2d 154 (Ct. App. 2003).

Private contracts or actions of individuals

U.S.—Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

Mo.—First Nat. Bank of Kansas City v. Danforth, 523 S.W.2d 808 (Mo. 1975).

N.J.—Brunson v. Rutherford Lodge No. 547 of Benev. and Protective Order of Elks, 128 N.J. Super. 66, 319 A.2d 80 (Law Div. 1974).

8 U.S.—Single Moms, Inc. v. Montana Power Co., 331 F.3d 743 (9th Cir. 2003).

Discriminatory lending practices

A borrower's claims of discriminatory lending practices by private banking institutions did not allege sufficient state action to support claims under the Fourteenth and Fifteenth Amendment even though state and federal authorities heavily regulated the banking industry.

U.S.—Powell v. American General Finance, Inc., 310 F. Supp. 2d 481 (N.D. N.Y. 2004).

9 U.S.—St. Augustine High School v. Louisiana High School Athletic Ass'n, 270 F. Supp. 767 (E.D. La. 1967), judgment aff'd, 396 F.2d 224, 12 Fed. R. Serv. 2d 592 (5th Cir. 1968).

10 U.S.—Golden v. Biscayne Bay Yacht Club, 530 F.2d 16, 49 A.L.R. Fed. 563 (5th Cir. 1976).

As to discrimination in enforcement of private covenants and restrictions, see § 1297.

11 U.S.—Cypress v. Newport News General and Nonsectarian Hospital Ass'n, 375 F.2d 648 (4th Cir. 1967).

12 § 1292.

13 U.S.—Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, 295 F. Supp. 2d 1141, 184 Ed. Law Rep. 315 (D. Haw. 2003), aff'd in part, rev'd in part on other grounds, 416 F.3d 1025, 200 Ed. Law Rep. 53 (9th Cir. 2005), rev'd in part on reconsideration on other grounds, 470 F.3d 827, 214 Ed. Law Rep. 926 (9th Cir. 2006) and aff'd, 470 F.3d 827, 214 Ed. Law Rep. 926 (9th Cir. 2006).

14 U.S.—Small v. Hudson, 322 F. Supp. 519 (M.D. Fla. 1970).

Sponsor of racial discrimination

Private discrimination, however distasteful or invidious, is not prohibited by the constitutional strictures of equal protection, but if a state or agencies of a state actively engage in, or even sponsor, racial discrimination, the provisions of the Fourteenth Amendment are called into play.

U.S.—Com. of Pa. v. Brown, 270 F. Supp. 782 (E.D. Pa. 1967), judgment aff'd, 392 F.2d 120, 25 A.L.R.3d 724 (3d Cir. 1968).

Duty to protect the oppressed

Where individuals attempt to use intimidation and violence against others as part of a system of discrimination, state officials have a duty to take reasonable measures to protect the oppressed, and officials may not be allowed to escape that duty simply by asserting that it is merely a matter of individual discrimination.

U.S.—Huey v. Barloga, 277 F. Supp. 864 (N.D. Ill. 1967).

15 U.S.—Com. of Pa. v. Brown, 270 F. Supp. 782 (E.D. Pa. 1967), judgment aff'd, 392 F.2d 120, 25 A.L.R.3d 724 (3d Cir. 1968).

Cases alleging racial discrimination

A lesser degree of state involvement is needed to meet the state-action requirement in cases alleging racial discrimination than in those claiming a denial of due process or an infringement of First Amendment rights.

U.S.—Taylor v. Consolidated Edison Co. of New York, Inc., 552 F.2d 39 (2d Cir. 1977).

16 U.S.—Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

State enforcement

To the extent that a state undertakes the obligation to enforce a private policy of racial segregation, the State is charged with racial discrimination and violates the Fourteenth Amendment.

U.S.—Griffin v. State of Md., 378 U.S. 130, 84 S. Ct. 1770, 12 L. Ed. 2d 754 (1964).

End of Document

16B C.J.S. Constitutional Law § 1282

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

A. Discrimination by Reason of Race, Color, Ethnicity, or Creed

1. In General

§ 1282. Strict scrutiny test for equal protection; suspect classifications

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3078

A classification which involves a suspect class based on race, creed, color, gender, national origin, or legitimacy, or which affects a fundamental right, is subject to strict scrutiny by the courts.

The highest level of review, or "strict scrutiny," is invoked where the law that is the subject of an equal protection challenge results in classifications based on suspect factors such as race, national origin, or ethnicity[1] even if the law is ostensibly remedial in nature.[2] The courts will closely scrutinize statutes involving such suspect classifications and uphold only statutes that are narrowly tailored to serve a compelling state interest.[3]

Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, the government is still constrained by the Equal Protection Clause of the Fourteenth Amendment in how it may pursue that end, and the means chosen to accomplish the government's asserted purpose must be specifically and narrowly framed to accomplish that purpose.[4] In other words, racial classifications are constitutional only if they are narrowly tailored measures that further a compelling governmental interest,[5] and the classification should be the least drastic means required to achieve that interest.[6] Purportedly benign or remedial racial classifications by the government comply with the constitutional guarantee of equal

protection only if the classifications are narrowly tailored measures[7] that further compelling governmental interests.[8] Simple legislative assurances of good intention cannot suffice to create triable issues of fact on whether racial classifications are necessary under the Federal Equal Protection Clause.[9]

The standard of review under the Equal Protection Clause is not dependent on the particular race of those burdened or benefited by a certain classification.[10] That is, all racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized, and this standard of review is not dependent on the race of those burdened or benefited by a particular classification.[11] Thus, any person, of whatever race, has a right to demand that any governmental actor subject to the United States Constitution justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny.[12]

Footnotes

1 Mich.—Crego v. Coleman, 463 Mich. 248, 615 N.W.2d 218 (2000).
Strict scrutiny of racial classifications
U.S.—Fisher v. University of Texas at Austin, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013); Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).
Race, alienage, and nationality as suspect criteria
Wis.—Czapinski v. St. Francis Hosp., Inc., 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120 (2000).
Presumptive invalidity
U.S.—Lewis v. Ascension Parish School Bd., 662 F.3d 343, 274 Ed. Law Rep. 26 (5th Cir. 2011).
Cal.—Coral Const., Inc. v. City and County of San Francisco, 50 Cal. 4th 315, 113 Cal. Rptr. 3d 279, 235 P.3d 947 (2010).
Iowa—In re A.W., 741 N.W.2d 793 (Iowa 2007).

2 Cal.—Coral Const., Inc. v. City and County of San Francisco, 50 Cal. 4th 315, 113 Cal. Rptr. 3d 279, 235 P.3d 947 (2010).

3 U.S.—Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005).
Mass.—Murphy v. Commissioner of Dept. of Indus. Accidents, 415 Mass. 218, 612 N.E.2d 1149 (1993).
Same analysis for preferences based on race or national origin
U.S.—Majeske v. City of Chicago, 218 F.3d 816, 47 Fed. R. Serv. 3d 542 (7th Cir. 2000).
Detailed judicial inquiry concerning governmental actions based on race
U.S.—Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).

4 U.S.—Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

5 U.S.—Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).
Iowa—Sanchez v. State, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
"Narrowly tailored" construed
U.S.—F. Buddie Contracting, Ltd. v. Cuyahoga Community College Dist., 31 F. Supp. 2d 584, 132 Ed. Law Rep. 117 (N.D. Ohio 1998).
Purpose of narrow tailoring requirement
The purpose of the narrow tailoring requirement, when determining whether racial distinctions are permissible under the Equal Protection Clause to further a compelling state interest, is to ensure that the means chosen fit the compelling goal so closely that there is little or no possibility that the motive for the classification was an illegitimate racial prejudice or stereotype. Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

6 U.S.—Seattle School Dist. No. 1 v. State of Wash., 633 F.2d 1338 (9th Cir. 1980), judgment aff'd, 458 U.S. 457, 102 S. Ct. 3187, 73 L. Ed. 2d 896, 5 Ed. Law Rep. 58 (1982).

7 U.S.—Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980); Montana Contractors' Ass'n v. Secretary of Commerce, 460 F. Supp. 1174 (D. Mont. 1978).

8 Ohio—Ritchey Produce Co., Inc. v. Ohio Dept. of Adm. Serv., 85 Ohio St. 3d 194, 1999-Ohio-262, 707 N.E.2d 871 (1999).

Legislation on behalf of Native Americans

In two relatively narrow situations, Congress can create specific mandates or interests empowering states or units of local government to legislate on behalf of Native Americans without creating suspect classifications; in the first situation, the State acts under a particularized, state-specific congressional delegation of jurisdiction, and in the second situation, the State acts to accommodate federal supremacy in the field by enforcing congressionally created federal obligations toward Indian tribes that the federal government would otherwise enforce on its own.

Alaska—Malabed v. North Slope Borough, 70 P.3d 416 (Alaska 2003).

9 Cal.—Coral Const., Inc. v. City and County of San Francisco, 50 Cal. 4th 315, 113 Cal. Rptr. 3d 279, 235 P.3d 947 (2010).

10 U.S.—City of Richmond v. J.A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989).

11 U.S.—Gratz v. Bollinger, 539 U.S. 244, 123 S. Ct. 2411, 156 L. Ed. 2d 257, 177 Ed. Law Rep. 851 (2003).

12 U.S.—Gratz v. Bollinger, 539 U.S. 244, 123 S. Ct. 2411, 156 L. Ed. 2d 257, 177 Ed. Law Rep. 851 (2003).

End of Document

16B C.J.S. Constitutional Law § 1283

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

A. Discrimination by Reason of Race, Color, Ethnicity, or Creed

1. In General

§ 1283. Remedial legislation; affirmative action programs

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3252

A governmental agency has a compelling interest in remedying its previous discrimination and, thus, such an agency generally may employ affirmative action measures to rectify that past conduct without violating the Equal Protection Clause of the United States Constitution.

The Federal Constitution imposes a duty upon the states to take affirmative steps to eliminate the continuing effects of past discrimination,[1] and a classification which is designed to remedy the adverse effects of present or past racial discrimination is permissible under appropriate circumstances.[2] A governmental agency has a compelling interest in remedying its previous discrimination, and such an agency thus generally may use racial preferencing to rectify that past conduct, without violating the Equal Protection Clause of the United States Constitution.[3] However, when the government seeks to defend actions based on race as remedial under Equal Protection Clause, there must be a strong basis in evidence for its conclusion that remedial action was necessary.[4] The government must show real evidence of past discrimination and cannot rely on conjecture.[5] Moreover, a party which seeks to justify a remedial program as a means to combat the present effects of past discrimination must prove that the effect it proffers is caused by the past discrimination and the effect is of a sufficient magnitude to justify the program.[6]

While in the remedial context, the legislature need not act in a wholly "color-blind" fashion,[7] a legislative scheme that employs racial criteria, even in a remedial context, calls for close examination[8] and must serve a compelling governmental purpose.[9] Furthermore, it must be shown that no less objectionable racial classifications will serve the same purpose.[10] An affirmative action plan must be narrowly tailored to survive strict scrutiny on an equal protection challenge, but such a plan will pass muster if it discriminates against whites as little as possible consistent with effective remediation.[11] The court considers several factors in determining whether the purpose of a government-enacted race-conscious program is narrowly tailored to accomplish that purpose in accordance with the Equal Protection Clause, including: (1) the efficacy of alternative, race-neutral remedies; (2) flexibility; (3) over- or under-inclusiveness of the program; (4) duration; (5) the relationship between numerical goals and the relevant labor market; and (6) the impact of the remedy on third parties.[12]

Avoidance of passive participation in private discrimination.

The government may implement race-conscious programs not only for the purpose of correcting its own discrimination but also to prevent itself from acting as a passive participant in private discrimination.[13]

Use of quotas.

A legislative scheme which seeks to insure that, in any facet of public life, percentages of races are proportionate generally is invalid.[14] To be narrowly tailored, as required by the Equal Protection Clause, a race-conscious admissions program for a state university cannot use a quota system, and it cannot insulate each category of applicants with certain desired qualifications from competition with all other applicants; instead, a university may consider race or ethnicity only as a plus in a particular applicant's file, without insulating the individual from comparison with all other candidates for the available seats.[15]

CUMULATIVE SUPPLEMENT

Cases:

It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons, and this imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments. U.S.C.A. Const.Amends. 13–15. Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 197 L. Ed. 2d 107, 102 Fed. R. Evid. Serv. 1084 (2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Detroit Police Officers' Ass'n v. Young, 608 F.2d 671 (6th Cir. 1979).
Redistricting
States are not required by the Fourteenth and Fifteenth Amendments of the United States Constitution to take affirmative action during the redistricting process to ensure that a congressional district is created with a maximum percentage of black residents.
U.S.—Turner v. State of Ark., 784 F. Supp. 553 (E.D. Ark. 1991), judgment aff'd, 504 U.S. 952, 112 S. Ct. 2296, 119 L. Ed. 2d 220 (1992).
As to racial discrimination in election matters and redistricting, generally, see § 1284.

2 U.S.—Northern Contracting, Inc. v. Illinois, 473 F.3d 715 (7th Cir. 2007); Associated General Contractors of Massachusetts, Inc. v. Altshuler, 361 F. Supp. 1293 (D. Mass. 1973), judgment aff'd, 490 F.2d 9 (1st Cir. 1973).

Cal.—Deronde v. Regents of University of California, 28 Cal. 3d 875, 172 Cal. Rptr. 677, 625 P.2d 220 (1981).

N.Y.—Alevy v. Downstate Medical Center, 39 N.Y.2d 326, 384 N.Y.S.2d 82, 348 N.E.2d 537 (1976).

Racial preferences as basic tools to remedy constitutional violations

U.S.—Morgan v. Kerrigan, 530 F.2d 401 (1st Cir. 1976).

3 U.S.—Majeske v. City of Chicago, 218 F.3d 816, 47 Fed. R. Serv. 3d 542 (7th Cir. 2000).

Race-conscious affirmative action programs not permitted by state constitution

La.—Louisiana Associated General Contractors, Inc. v. State Through Div. of Admin., Office of State Purchasing, 669 So. 2d 1185 (La. 1996).

A.L.R. Library

What Constitutes Reverse or Majority Race or National Origin Discrimination Violative of Federal Constitution or Statutes—Public Employment Cases, 168 A.L.R. Fed. 1.

4 Cal.—Coral Const., Inc. v. City and County of San Francisco, 50 Cal. 4th 315, 113 Cal. Rptr. 3d 279, 235 P.3d 947 (2010).

5 U.S.—Majeske v. City of Chicago, 218 F.3d 816, 47 Fed. R. Serv. 3d 542 (7th Cir. 2000).

6 U.S.—Podberesky v. Kirwan, 38 F.3d 147, 95 Ed. Law Rep. 52 (4th Cir. 1994), amended on other grounds on denial of reh'g, 46 F.3d 5 (4th Cir. 1994).

7 U.S.—Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980).

8 U.S.—Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980).

9 U.S.—Constructors Ass'n of Western Pennsylvania v. Kreps, 441 F. Supp. 936 (W.D. Pa. 1977), judgment aff'd, 573 F.2d 811 (3d Cir. 1978).

State involvement in discrimination as compelling interest

For purposes of a strict-scrutiny review of a race-based classification under the Equal Protection Clause, a state has a compelling interest in remedying both the past and present effects of identified racial discrimination within its jurisdiction where the State itself was involved in discriminatory practices.

Ohio—Ritchey Produce Co., Inc. v. Ohio Dept. of Adm. Serv., 85 Ohio St. 3d 194, 1999-Ohio-262, 707 N.E.2d 871 (1999).

Discrimination against protected group

While affirmative action may satisfy a compelling governmental interest to undo past discrimination against suspect groups as racial minorities, such action cannot meet the higher equal protection standard if it discriminates against some of the group which it is designed to protect.

U.S.—Wiesenfeld v. Secretary of Health, Educ. and Welfare, 367 F. Supp. 981 (D.N.J. 1973), judgment aff'd, 420 U.S. 636, 95 S. Ct. 1225, 43 L. Ed. 2d 514 (1975).

10 N.Y.—Alevy v. Downstate Medical Center, 39 N.Y.2d 326, 384 N.Y.S.2d 82, 348 N.E.2d 537 (1976).

11 U.S.—Majeske v. City of Chicago, 218 F.3d 816, 47 Fed. R. Serv. 3d 542 (7th Cir. 2000).

12 U.S.—DynaLantic Corp. v. U.S. Dept. of Defense, 885 F. Supp. 2d 237 (D.D.C. 2012), appeal dismissed, 2013 WL 4711715 (D.C. Cir. 2013).

13 U.S.—DynaLantic Corp. v. U.S. Dept. of Defense, 885 F. Supp. 2d 237 (D.D.C. 2012), appeal dismissed, 2013 WL 4711715 (D.C. Cir. 2013).

14 U.S.—Montana Contractors' Ass'n v. Secretary of Commerce, 460 F. Supp. 1174 (D. Mont. 1978).

Consent decree requiring minimum number of black judges

The provisions of a proposed consent decree requiring a state to have a minimum number of black judges violates equal protection.

U.S.—Brooks v. State Bd. of Elections, 848 F. Supp. 1548 (S.D. Ga. 1994), appeal dismissed and remanded on other grounds, 59 F.3d 1114 (11th Cir. 1995).

15 § 1293.

End of Document